COMPARISON OF ARIZONA'S STATUTES, POLICY, TRAINING, AND EDUCATION TO THE MODEL CODE ON DOMESTIC AND FAMILY VIOLENCE, NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, 1994.

DHS Contract Period EDC 9/30/02
Core Injury Surveillance and Program Development Cooperative Agreement
Violence Against Women Supplemental Activities

ACADV was contracted to compare Arizona's domestic violence legislation to the Model Code and identify gaps and needs in the areas of additional legislation, policy, enforcement, and/or training and education. In preparation of this paper, we would like to thank Ann Tarpy and Eleanor Strang, DHS, for providing the funding for this project, and to Eleanor Strang for her review of drafts of the project. For input, comments, and editing we would also like to thank Kathleen Ferraro and Sharon Murphy, ASU professors, Allie Bones, Brandi Brown, Becky Martin, Doreen Sharp, and Lynne Norris, ACADV staff.

The Model Code is organized around five principles:

- Prevention
- Protection
- Early Intervention
- Rebuilding the lives of victim-survivors
- Accountability for perpetrators

First, the specific provisions of the Model Code will be compared with similar provisions in Arizona law noting whether Arizona law meets the standard of the Code. Second, legal issues not addressed in the Code but that are problems in Arizona will be discussed either inside the relevant chapter or in two chapters at the end. Three, issues regarding implementation, training, enforcement and education will be integrated within the chapter topics. Four, detailed recommendations will be made within the chapter both pointing to the specific section which needs attention and a chapter conclusion that addresses Arizona's compliance with the five principles. A summary conclusion closes the document.

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Chapter 1 - General Provisions

Sec. 102 – Definitions

The Model Code specifically defines a new crime of family violence and the persons to whom it applies. That is one strategy states have used to encourage police to arrest for family violence. The other strategy is the one chosen by Arizona in which no new crime is created. The statute, Arizona Revised Statutes (ARS) 13-3601, simply says that the existing crimes (listing them) if done to a person in a familial or intimate relationship, which is defined, is domestic violence. Nationally, the different approaches do not seem to have created different results. ACADV conducts an annual survey of service providers on legislative issues and the community is divided about whether or not a specific code section is needed.

Chapter 2 - Criminal Penalties and Procedures

Section 201 – Crime involving domestic or family violence defined

The various types of crimes that comprise family violence are listed much like ARS 13-3601 (A)

Sec. 202 – Violation of certain orders for protection is a misdemeanor.

In ARS 13-3602(M), an officer may arrest with probable cause if the defendant on the order of protection has violated ARS 13-2810. ARS 13-2810 states that a person who disobeys a court order has committed a class 1 misdemeanor.

In practice, the defendant is rarely arrested for violating an order and if so, rarely convicted. This is one area where improvements are necessary in police, prosecutor, and judicial training and practice.

Sec. 203 – Enhancement of penalty for second or subsequent crime involving domestic or family violence

The Model Code mandates that with a second or more offense within five years, the penalty is enhanced one degree above the otherwise provided penalty. ARS 13-3601.02 is Arizona's aggravated domestic violence statute. However, in Arizona's statute, there is no penalty enhancement. Instead, upon a third or subsequent offense involving domestic violence, the perpetrator can be charged with aggravated domestic violence, a class five felony.

Upon conviction of the third offense, the person is not eligible for any form of release or suspended sentence until s/he has served at least four months.

Upon the fourth conviction, they must spend eight months in jail.

In ARS 13-3601(O), upon first conviction, the defendant is given a notice that upon a second conviction s/he may get supervised probation or jail. Since supervised probation is not funded in city court, most defendants will get no penalty. The notice also tells the defendant that if convicted a third time, they will be incarcerated. This is the only crime where the defendant gets three bites at the apple before he is held accountable.

In reality, the perpetrator is even less likely to be held accountable. Because the jurisdictions, city, county, state courts, do not communicate nor are their computers always compatible, often a perpetrator will have been convicted several times e.g. in a city court, in a justice court, and in superior court but none of the judges knows about the previous convictions. Thus the perpetrator is treated as a first offender when s/he may have several previous convictions. In some cases, even when certified copies of previous convictions are given to the court, the earlier convictions are ignored.

A second problem is with diversion. In Arizona, if diversion is successfully completed, there is no record of that first conviction so on a second offense, the perpetrator is treated as a first offender. In fact, the statute, ARS 13-3601.01(A) allows a perpetrator to be sentenced to diversion again on a second offense. Thus he might have two previous convictions for which he was not held accountable.

Sec. 204 – Duties of law enforcement officer to victim of domestic or family violence; required notice to victim

The Model Code requires officers to take certain actions for the safety of the victim and prevention of future violence, including confiscation of weapons, collection of personal effects, medical attention, notice of victim's rights, and information about an order of protection.

In ARS 13-3601(B), the officer is mandated to arrest unless s/he believes the victim will be protected from further injury. This provision is rarely honored. In 1999, statewide, there were over 99,000 calls to law enforcement related to domestic violence. In only 44% were reports written, in only 21% were arrests made, in only 11,689 or 12% were cases submitted for prosecution. In 2000 in Phoenix, 52,586 calls were received, 14,878 reports written (28%), 5,000 arrests were made (10%), 6,772 cases were submitted for prosecution (13%). We have no figures on successful prosecution or sentence.

ARS 13-3601(C) allows the officer to ask about the presence of firearms. The officer may seize the firearm only if it was in plain view or through a consent search and the officer has reason to believe the presence of the firearm would put the victim or others at risk. We have no figures on the number of firearms seized. We have anecdotal information that when victims ask in an order of protection to prohibit the defendant from having firearms, often they are refused, the judge says a rifle is not a weapon, or the defendant is told to leave the guns at his mothers or brothers which is a useless gesture.

ARS 13-3601(J) requires the officer to inform the victim in writing of the availability of an order of protection and the existence of emergency services in the community. However, ARS 13-3601(K) absolves the officer of any liability if s/he does not do so. The Model Code has no such immunity provision. One suggestion to encourage compliance has been to make officers personally liable when they do not follow the law or department policy when dealing with domestic violence cases.

Sec. 205 – Powers and duties of law enforcement officers to arrest for crimes involving domestic or family violence; determination of primary aggressor; required report

The Model Code provision is far superior to the Arizona version. Arizona's language, ARS 13-3601(B) only mandates arrest when there is infliction of physical injury or use of a weapon unless the officer believes the victim will be safe. Obviously this leaves a lot of discretion for an officer. The statistics quoted above show that the discretion is most often used not to arrest.

Arizona has no statutory language regarding dominant or primary aggressor. We do have language in 13-3601(B) stating that to arrest both parties, the officer must have evidence that both parties committed an act of domestic violence independently and that self-defense is not domestic violence. However, again that is rarely honored as Arizona has one of the highest dual arrest and arrest of women rates in the country. From newspaper clippings ACADV collects from throughout the state, it appears that 20% of the time, women are being arrested. In Tucson, arrests of women total 25% of all domestic violence arrests. In one month in Gila County, 18 women and 14 men were ordered to Batter Intervention Programs (BIP). This is contrary to the law, common sense and public safety. While estimates are that 15% of victims are men, most of the

perpetrators are other men. Thus to arrest women at such a high rate is a failure of equal protection under the law constituting discrimination against women.

Many departments are also violating ARS 13-3601(B) even when they do arrest because they are using cite and release procedures even though they are specifically prohibited in the statute. Some departments have changed their procedures upon notification; others are reluctant to do so.

Sec. 206 – Mandatory arrest for certain violations of orders for protection

ARS 13-3602(M) contains no mandatory arrest language for violations of orders of protection. The comments in the Model Code state, "… Research suggests that perpetrators are best deterred by swift and certain sanctions. Further support for the mandate stems from the conclusion of experts in the field that victims may refrain from seeking justice system intervention if perpetrators violate orders with impunity…" That is exactly the problem. Violators know they can disregard the order of protection over and over and over. They are not held accountable by the criminal justice system. Even if the officer does arrest, that does not guarantee that the prosecutor will charge or the judge will convict. Thus victims know they will not be protected.

Sec. 207 – Authority of law enforcement officer to seize weapons

In the Model Code, an officer shall seize a weapon if it is alleged to have been used or threatened to be used in commission of a crime. An officer may seize a weapon in plain view or discovered through a consent search or if necessary for the protection of the officer. Arizona's weapon seizure is in 13-3601(C-F). The Arizona version does not have the mandatory language that an officer shall seize a weapon involved or threatened to be involved in a crime. However, if there were an arrest, the officer could take the weapon (ARS 13-3895).

Sec. 208. Conditions of Release

The Model Code requires that before a person is released, the judicial officer shall determine whether the person is a threat to the victim or the public.

ARS 13-3601(B) states that the release procedures available in other misdemeanors are not available for domestic violence arrests. The person must be taken to jail and must remain there until s/he physically is brought before a judicial officer. (ARS 13-3898)

ARS 13-3601(I) states that any order for release shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other persons, and may provide for additional conditions that the court deems appropriate, including counseling.

In reality, most victims are not represented at the hearings, their stories are not adequately portrayed in the police reports, and most prosecutors do not convey the lethality of the situation. Therefore, judges make release decisions without even knowing the crime involved domestic violence, let alone providing for the victim's safety. Further compounding the problem is that most victims have no knowledge that a release order even exists nor the contents of it, even if she has opted for her victims rights. The Model Code requires the court to notify the victim of the release and release orders.

In counties smaller than 150,000 people, ARS 13-3614(B) requires that the release order be forwarded to the sheriff's office. Law enforcement is to advise the victim where s/he can get a copy of the release order.

Sec. 209 – Mandatory arrest for violation of conditions of release

ARS 13-3968 states that only upon a petition by the prosecutor in a felony case that the defendant has violated a condition of release, the judicial officer may revoke the release. Most domestic violence charges, though serious enough for felonies, are charged as misdemeanors. There is no provision for mandatory arrest even for violation of felony probation conditions let alone misdemeanor. Officers could use ARS 13-2810 for violation of a court order, but they rarely do.

Sec. 210 – Written procedures for prosecution of domestic and family violence; purpose

The Model Code requires that the prosecuting attorney have a protocol for effective prosecution of the cases and protection and safety of the victims

The Office of the Maricopa County Attorney developed such a protocol in 1997. The protocol covers communication and patrol response, follow-up investigations, orders of protection, prosecution, victim/witness services, and offender intervention. Appendices include primary aggressor checklist, investigative aids, full faith and credit provisions, safety plan, ARS statutes on domestic violence, offender intervention standards, local resources, domestic violence training, gun seizure information, and sample motions. The protocol itself is quite good. Unfortunately, the Maricopa County attorney's office has chosen to make unilateral changes to the protocol that are victim-blaming. The previous protocol made it clear that the order of protection was against the defendant and nothing the plaintiff did could change the order. This is clearly printed in bold type on the order to the defendant as well. However, the county prosecutor decided that they might not prosecute violations of orders of protection if the victim allegedly induced, enticed, or invited contact with the defendant. This is not only a victim-blaming provision, but makes it virtually impossible to prosecute any cases as the defendant will always claim the plaintiff invited contact. When the case becomes "he said/she said" the potential for prosecution is severely diminished.

Pinal County also has a protocol, revised in 1998. It covers communication and patrol response, follow-up investigations, orders of protection, prosecution, victim/witness services, offender intervention, and probation. Appendices include primary aggressor checklist, investigative aids, full faith/credit provisions, safety plan, ARS statutes, offender intervention standards, local resources, domestic violence training, gun seizure information, and sample motions. Anecdotal information is that the same problem exists; prosecutors are blaming the victim for allegedly inviting contact and thus obviating the order of protection.

Other counties may have protocols, but they have not been examined.

Sec. 211 – Duty of prosecutor to notify victim

The prosecutor has the duty of notifying the victim of her rights. Arizona's crime victim rights section is found in ARS 13-4401 et seq. Law enforcement is responsible for notifying victims of their rights.

Sec. 212 – Record of dismissal required in court file

The Model Code requires that if a case is to be dismissed, the specific reasons for the dismissal must be included in the file. Arizona does not have this provision and we should. A study done at the Maricopa County Prosecutors office by Kathleen Ferraro and Tasha Boychuk in January 1987 to February 1988 found that the primary reasons domestic violence cases were dismissed was to send the case to the city as a misdemeanor. For intimate cases, 35.7% rejected for this reason; for nonintimate 36.4% were sent to the city. The second most common reason given was "no reasonable likelihood of conviction." This was the stated reason for 10.3% of intimate and 14.6% of nonintimate assaults. This category seems to be a convenient catchall for cases that are weak for a variety of reasons. The next most common reason given referred to the inadequacy of police reports. For 10% of intimate and 12.7% of nonintimate assaults, prosecutors viewed police reports as incomplete or in need of clarification.

The proportion of cases declined due to victim reluctance to prosecute was 13.1% for intimate victims and 2.6% of nonintimates. In the data, the majority of intimate victims were cooperative with prosecution (49%). However, a large proportion of intimate victims did request for charges to be dropped once filed (39 percent). Stranger-victims were unavailable in 27% of cases and they requested that charges be dropped in 6%. The stranger-victims included police officers (15.7%) who are not likely to be unavailable or to request that charges be dropped making stranger-victim prosecutions artificially high.

The most commonly assumed reason for dropping cases of assault against intimates is the victim's failure to cooperate with prosecution. The study did find that the participation of a victim as witness was significantly correlated with the disposition of cases (chi-square < 001). For cases resulting in guilty pleas, 60 percent of all victims were missing or unavailable. On the other hand, the case was dismissed when the victim was missing in 47.6 percent of all cases and when the victim wanted charges dropped in 23.8 percent of cases. However, breaking the response of victims into intimate and nonintimate categories suggests that the stereotype of battered women's failure to cooperate is not entirely accurate nor relevant.

Of all nonintimate victims, 27 percent were missing at the time of trial, 64 percent desired and participated in prosecution, and 6 percent requested charges be dropped. For intimates, only 7 percent of victims were missing, 16 percent said they wanted help, not prison for their assailant, 33 percent desired prosecution, and 39 percent wanted charges dropped. The difference between intimate and nonintimate requests for dropping charges is significant, but it is important to recognize that 33 percent of intimate victims desired prosecution and an additional 16 percent were cooperative but stressed their desire that assailants receive help. This latter view of offenders was completely missing in the nonintimate group. In addition, the lack of victims' cooperation in prosecution was not always fatal to a case. In fact, of the cases where victims wanted charges dropped, 65% resulted in guilty pleas. However, in 16% where victims were cooperative and desired prosecution, cases were dropped. This suggests that battered women's participation as "good" witnesses is often unnecessary for successful prosecution. Of those victims requesting that charges be dropped, 70% had documented injuries that gave prosecutors leverage for obtaining pleas even without a willing witness. At the same time, cooperation of victims is no panacea for case dismissal, as 16% of cases were dropped

against the wishes of victims. (p. 220-221) "The Court's Response to Interpersonal Violence: A Comparison of Intimate and Nonintimate Assault," K. Ferraro and T. Boychuk, pp. 209-226 in E. Buzawa, ed., *Domestic Violence: The Criminal Justice Response*. Westport: Greenwood, (1992).

If prosecutors were required to specifically state their reasons for dismissing the case, they might be more reluctant to dismiss so many domestic violence cases. Because San Diego, CA had a very high homicide rate in domestic violence cases, they began a project of arresting perpetrators and holding them accountable for the most minor of incidents, a push, a slap. The number of prosecutions jumped dramatically but the number of murders fell just as dramatically. Prosecution of assaults, no matter how seemingly "minor", will prevent future prosecutions for homicide.

Sec. 213 – Dismissal of criminal case prohibited because civil compromise reached

Prosecutors cannot dismiss a criminal case because the parties have reached a civil compromise. ARS 13-3981 (B) specifically states that domestic violence cases shall not be compromised due to a civil settlement except upon recommendation by the prosecuting attorney. This statute needs to be revisited. A crime is different than a civil action. A crime is against the peace of the community and the law of the state as well as the individual victim. Thus the prosecution should not cease just because the victim reached a civil settlement. There is a larger victim i.e. the community and the future that needs to be addressed.

On the other hand, the criminal law does not provide sufficient restitution for the victim nor make her whole. If a civil action can do that, and the only way that action will be concluded is if the criminal action is dropped, then should the victim have the right to receive that remedy to make her whole?

This issue as well as the "no-drop" prosecution polices has received significant national discussion and research. The discussion needs to take place in Arizona between law enforcement, victim's advocates, and victims themselves.

Sec. 214 – Rights of victims of domestic or family violence; duty of prosecutor to inform victim of rights

Arizona's crime victim rights section is found in ARS 13-4401 et seq. Law enforcement is responsible for notifying victims of their rights. Arizona has all the rights recommended by the Model Code. Implementation has not been uniform. Because of that, a program has started at Arizona State University Law School to represent crime victims in court to ensure their victim's rights and to train other lawyers to do the same to ensure compliance. Because of a perceived lack of enforcement for victim's rights, Arizona Senator Jon Kyl is one of the sponsors of a constitutional amendment to put victim's rights into the Constitution.

Sec. 215 – Spousal privileges inapplicable in criminal proceedings involving domestic or family violence

ARS 12-2231 grants a spousal privilege in Arizona but in ARS 12-2232, that privilege is limited. One spouse can testify against the other in a divorce or civil action, a criminal action, or for alienation of affection or adultery.

Sec. 216 – Advocate-victim privilege applicable in cases involving domestic or family violence

The Model Code recommends that such a privilege exist. Arizona does not provide a specific advocate-victim privilege involving domestic or family violence. A recent attempt in 2002 to pass such legislation failed. Consultation between a crime victim advocate and a victim is privileged under ARS 13-4430. However, that only goes into effect after a criminal case has been filed. (ARS 13-4402)

Certified behavioral health professionals can have a privilege under ARS 32-3283. However, not all victim advocates are or can become certified health professionals. In certain cases, the protections for medical records (ARS 12-2292) and mental health records (ARS 36-517.01) can be used to protect files.

Federal statutes also provide various protections depending on the funding sources of the various service providers. See Chapter 6.

Sec. 217 – Residential confinement in home of victim prohibited

ARS 41-1604.13 regulates home arrest. The prisoner has to meet certain criteria which includes that the conviction was for a class 4-6 felony not involving serious physical injury or weapon, not a sexual offense, is not a recidivist, or committed a technical parole violation. The criteria for decision is that there is a substantial probability that the inmate will remain at liberty without violating the law, that the release is in the best interests of the state, prior record, conduct of inmate, and other information in possession of Department of Correction (DOC) including that in the presentence report.

The victim is required to be notified (E) at least 15 days in advance of the hearing. There is however no prohibition against confinement in the home of the victim.

Sec. 218 Diversion prohibited; deferred sentencing permitted.

The Model Code recommends that diversion be prohibited. Deferral can be done if both prosecutor and victim consent, the defendant pleas or is found guilty, and if the conditions of the sentence protect the safety of the victim, prevent future violence, and rehabilitate the offender.

Contrary to the Model Code, ARS 13-3601(M-N) allows for diversion of domestic violence cases if the defendant is found guilty. The judge need not order a judgment of guilt and needs the consent of the defendant rather than the victim. The judge can order the defendant to probation or intensive probation. Since there is no funding for these programs, they are essentially useless and do not hold the defendant accountable.

ARS 13-3601.01(A) allows a perpetrator who has already been ordered to a batterers intervention program (BIP) to be ordered again after a second conviction. This presents a serious danger to victims. If the abuser is convicted a second time, obviously the "treatment" didn't work. The message to the abuser is that he gets a free ride for the first two convictions. Most convictions do not represent the first time the abuser has used violence. Instead, most victims don't report until a pattern has been established. The message is clear – we don't take domestic violence seriously and we'll not hold you accountable until you get caught and convicted a third time. This is contrary to VAWA II that requires that batterers be held accountable. (H.R. 3244, January 2000)

When giving probation, the court shall include conditions necessary to protect the victim and other designated persons. The defendant can and often is ordered to a batterer intervention program.

Upon violation of probation, the court shall enter a judgment of guilty and sentence the defendant. Upon successful completion of probation, the judge shall dismiss the proceedings. This provision does not apply in cases where the defendant has previously been found guilty or charges against the defendant were previously dismissed under this section. However, often the court does not know that this is the second, third or tenth time the defendant has been given diversion. It may have been granted in a different city or county. Thus the defendant continues to violate the law with impunity.

In reality, if the defendant is sentenced to a batterer's intervention program (BIP), few defendants complete the program and few programs have follow up to see if their intervention has been successful. One program told me they don't even report to the court when the defendant stops coming to the classes because the court does not want to know. So once again, the defendant is not held accountable. If he is repeatedly allowed to be diverted into a BIP, there is no record of convictions and the provisions of the aggravated domestic violence become moot.

A broader problem is the efficacy of the BIPs. In England, the government has ceased funding BIPs because they cannot show, to the government's satisfaction, that the programs are successful. If the programs were not decreasing violence, then the money was ill spent. That level of accountability of programs is needed in Arizona. While Department of Health Services (DHS) has regulations for BIP's and has an approved list, the regulations do not meet the Model Code standards. See Chapter 5.

Sec. 219 – Conditions of probation for perpetrator convicted of crime involving domestic or family violence: required reports by probation department.

The Model Code recommends that the judge not only put conditions on probation to protect the victim and others, but that the probation department adopt protocols for dealing with domestic violence. Such protocols should include immediate reporting of any violation of probation. Arizona does not have this nor are probation violations reported, or if they are, they do not result in revocation of probation.

The first problem lies in the lack of monies for supervised probation in misdemeanor cases. Several pieces of legislation have attempted to remedy this situation but have not been passed. Anecdotally many victims have contacted the probation department to tell them of probation violations only to be ignored. In one case where the author testified as an expert witness, the judge did not revoke probation even though it was clear the defendant had continued his reign of domestic terror.

Sec. 220 – Conditions of parole for perpetrator convicted of crime involving domestic or family violence; required reports by parole board

The Model Code suggests that the parole board, called the Board of Executive Clemency in Arizona, can also place restrictions on parole to protect the victim and designated others, pay restitution, or attend programs. The parole board is also required to adopt policies and procedures for these cases.

ARS 41-412 outlines the criteria for parole. The three requirements are that the prisoner has served sufficient time, that s/he will remain at liberty without violating the law, and that the release is in the best interest of the state. The parole board can order the prisoner to pay any court ordered restitution (D) but cannot themselves order restitution. The parole board shall not disclose the address of the victim or the victims immediate family without the written consent of the victim (F). If the victim has availed herself of the victims rights provisions, s/he will be notified of the parole hearing and any parole release.

ARS 31-403 is the Arizona version of a clemency statute for victims of domestic violence. The eligibility standards are quite limited. The clemency statute will sunset on December 31, 2002. It only applies to cases before September 30, 1992. Only two battered women have received clemency in the last five years.

Sec. 221 – Duties of department of corrections

The Model Code recommends that the Department of Corrections (DOC) make programs of education and counseling available for offenders who are also victims of domestic or family violence, programs of intervention for perpetrators of domestic or family violence, and establish rules and regulations regarding initial and continuing training on domestic violence in conjunction with the statewide coalition against domestic violence.

ARS 31-255 establishes an alcohol abuse treatment fund which DOC can use to provide alcohol abuse and rehabilitation services.

ARS 31-240 establishes a prisoner education services budget for functional literacy, adult basic education, vocation and technical education, and GED programs.

ARS 41-1604.02 establishes a special services fund for the benefit, education and welfare of offenders.

Correctional officer training is covered in ARS 41-1661 et seq. There are no provisions for training on domestic violence or collaboration with ACADV.

The policy of DOC has been to allow very limited access to outside groups to provide services to inmates who are the victims of domestic violence. The existence of any programs on domestic violence for perpetrators is unlikely. Both are a serious need in Arizona.

Sec. 222 – Release of perpetrator permitted under certain conditions; notice to victim; confidentiality of victim's address

Release conditions are stated above in 219 and 220. Notification to the victim is required for a parole release and if the victim has availed herself of the victims rights statute, then they must be notified of all potential release.

Sec. 223 – Required written policies and procedures

The Model Code recommends that each law enforcement agency have policies describing effective response, enforcement, protection, and safety and coordination with medical services. Some departments have policies; many do not. Those who have policies sometimes follow them; sometimes not. When the perpetrator is a law enforcement officer, policies are often ignored in favor of allowing the officer to keep his gun and his job. There is a model domestic violence protocol for police officers but the

offer from the International Association of Chiefs of Police in March 2002 to come to Arizona and work with local departments on that has been declined.

Additional Issues in the Criminal Code

While the Brady, Lautenberg and state statutes apply regarding gun possession for officers convicted of domestic violence offenses, those laws are sidestepped by obvious tactics. When the perpetrator is a police officer, often the charges will be modified to not be domestic violence offenses; for example, disturbing the peace instead of assault. Thus even if convicted, the officer will not lose his job or weapons permit.

Even when an officer is convicted, law enforcement is slow to follow the law and remove the gun. One officer at DOC had been convicted three times for domestic violence offenses. Certified copies of the convictions were sent to DOC which has a policy of removing guns from officers who have been convicted. Nevertheless, it took about four months before DOC acted and only then after repeated communications.

Pursuant to an investigation by federal authorities of sexual abuse in Arizona's prisons, a lawsuit and a consent decree, Arizona DOC has instituted a program called Civil Rights of Institutionalized Persons Act Compliance (CRIPA). The program consists of a female program administrator, employment screening and training, reporting and investigation protocols for inappropriate sexual conduct, mental health services and quality assurance. Unfortunately, abuse of women prisoners continues as evidenced by recent cases.

In spite of the known problems in DOC with sex abuse of prisoners, Arizona is one of four states that still allows victims of sexual assault in a correctional institution to be charged with a crime. Sexual assault of prisoners (ARS 13-1419(B)) allows a prisoner to be charged with unlawful sexual contact regardless of the context of the sexual contact e.g. rape. Allegedly the section was to prevent prisoners from having consensual sex with an officer and then claiming it was forced. However, in a correctional situation, "consent" of the prisoner does not exist. Secondly, the officer is the person with the duty to refrain from inappropriate sexual activity with the prisoners, thus even "consensual" activity by an officer is and should be against the law. The prisoner can be charged with a class 5 felony which makes it a disincentive for prisoners to report sexual violence by correctional officers as they can then also be charged regardless of the circumstances.

Sexual assault of a spouse (ARS 13-1406.01) has additional proof requirements and lesser penalties. To prove sexual assault of a spouse, the victim has to not only show lack of consent, but also show "the immediate or threatened use of force against the spouse or another." This language harkens back to the ancient meaning of marriage when a wife permanently consented to sex with her husband upon marriage and he consented to financially support her. Statutes like this make it clear that she is still expected to have consented to his sexual demands whatever they may be. This archaic concept should be discarded and sexual assault of a spouse should be treated as any other sexual assault.

The penalty is also less for sexual assault of a spouse. The first offense is a class 6 felony with a statement in the statute telling the judge s/he can downgrade it to a misdemeanor and order the abuser to counseling. A second offense is a class 2 felony as is sexual assault of a stranger.

In fact, studies have shown that sexual assault by a spouse is even more traumatizing than sexual assault by a stranger. Between 14-25% of women are raped at least once during their marriages, and at least one-third of battered women are raped by their partners. "Marital rape is characteristic of the most violent marriages, and may be the best predictor of those domestic violence situations most likely to end in a homicide." (Bergen, Wife Rape: Understanding the Response of Survivors and Service Providers, Sage, 1995) From 1991-1998, Arizona was number six in the U.S. for the rate of intimate homicide among white females. (Injury Mortality Among Arizona Residents, 1989-1999) Part of the reason is the refusal to prosecute "low level" domestic violence thus allowing it to escalate and end in murder. This statute downgrading spousal sexual assault is the exact opposite of good public policy.

Many women reported that the rapes became progressively more violent overtime, especially when the men used pornographic materials. Wife rape victims are far more likely to experience anal and oral rape than other victims. Over half of the women whose partners raped them considered suicide.

Women who have been raped by their husbands are considerably more likely than other battered women to try to leave and file legal charges against their partners. Three-quarters left when the violence escalated. Sixty percent filed for orders of protection, 50% entered a battered women's program, and all sought help from service providers. If trapped, they are also more likely to kill their abuser. (Angela Browne, When Battered Women Kill, NY: Free Press, 1987)

But 98% of service providers failed to provide support groups for marital rape survivors, 25% of battered women' programs failed to provide individual counseling for them, and 24% of rape crisis centers actually refused to admit wife rape victims into their group! At the hospital, wife rape victims often were not given exams or were refused services offered to other victims.

All but three of the victims suffered long-term effects, including prolonged periods of depression, increased negative feelings about themselves, and suicidal or homicidal feelings. Some of the women were forced to leave the study due to self-medication by alcohol or drug abuse.

In another study, (Mahoney, Sexual Assault Report, May/June 1998), Mahoney found that a weapon was used in a sexual assault only 16% of the time. Thus under Arizona law, victims will have a hard time proving force in addition to lack of consent. Rapes and attempted rapes remained considerably underreported in the National Crime Victim Survey. Whereas 9% of stranger and 12% of acquaintance sexual attack victims experienced more than one attack in a six-month period, 65% of marital rape victims experienced multiple attacks. Marital rape victims were 10 times more likely to experience a multiple sexual attack, even when controlled for income and education. Many marital rape victims were sexually attacked more than 10 times in a six-month period. Marital sexually attacked victims were significantly more likely to experience repeated attacks than marital physically attacked victims. Thus marital sexual assault victims experience the highest chronicity of attacks. Yet in Arizona, they face a higher burden of proof and a lesser sentence, in fact for a first offense, the perpetrators face no sentence.

Women from rural areas and older women were more likely to experience multiple sexual attacks. Marital sexual assault victims are the least likely to seek medical

care and least likely to seek police involvement, though not by a statistically significant difference.

Dating violence is not covered under current Arizona legislation. A victim of dating violence can get an injunction against harassment, and legislation passed in the 2002 session allows the service and filing fees to be waived in accordance with VAWA II. Dating violence is quite common especially in teenagers. Forty percent of girls age 14-17 report knowing someone their age who has been hit or beaten by a boyfriend. (The Commonwealth Fund Survey of the Health of Adolescent Girls, November 1997) Approximately one in five female high school students reports being physically and/or sexually abused by a dating partner. (Jay G. Silverman, PhD; Anita Raj, PhD: Lorelei A. Mucci, MPH; and Jeanne E. Hathaway, MD, MPH, "Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality," Journal of the American Medical Association, Vo. 286, No. 5, 2001.) Further information can be obtained at http://www.NCVC.org/law/issues/dating_violence/stats.htm

Several states including Illinois, Louisiana, Oregon, South Carolina, and South Dakota have added "cyberstalking" to the elements of what constitutes an act of domestic violence. Given the continued importance of the internet, especially with confidentiality issues, this should be added in Arizona as well.

Gender bias in the courts is a problem that has not been addressed. In 1990 the Arizona Supreme Court ordered a gender bias study to be done. It has not yet begun. An example of why such a study is needed is a case from December 1, 2001. Richard Raschillo was placed on five years probation for a plot to kill his wife. His co-conspirator, a woman, was given five years in prison. In the case of Lisa Shannon, she received 18 years for allegedly conspiring to have her husband killed. But the man who actually killed him received only 15 years. In the case of Elizabeth Terwilliger, the man who allegedly killed her husband with an axe, was released due to lack of evidence, but Elizabeth was sentenced to 11 years.

Women are also blamed if injury comes to a child. Recently in the Neal case, the mother was at work when the child was killed. But because she had taken out an order of protection against him, which she did not have served, the judge said she should have known the defendant would be violent to the child, and she was sentenced to 10 years. On one hand, some legislators are claiming women overuse orders of protection. Yet the Department of Economic Security (DES) report *supra* shows that only 5% of battered women who seek shelter obtain orders of protection. On the other hand, if women don't get an order of protection, they are blamed for that too. Reverse the scenario. Imagine the father is at work but he knows the mother is having serious problems. The children are harmed. Is the father charged? Andrea Yates' husband was not.

Research also shows that when women kill, it is seven times more likely to be in self-defense. (Cynthia K. Gillespie, Justifiable Homicide, 1987) In 1992 in response to Korzep v. Superior Court, 1991 Ariz. App. LEXIS 345 (Ct. App. Dec. 24, 1991), advocates succeeded in passing ARS 13-415 ensuring that the reasonableness standard in self-defense would be fairly applied to victims of domestic violence. Yet the statute has never been cited in a reported domestic violence homicide prosecution. In 1998, the Maricopa County Bar Association (MCBA) held a Continuing Legal Education course (CLE) entitled "Battered Women Syndrome in Criminal Cases" and ARS 13-415 is not

even mentioned. In a survey done by ACADV in 2001, defense attorneys said that State v. Mott, 187 Ariz 536, 931 P 2d 1046 (1997) overrode ARS 13-415, but it specifically did not. Mott was not a self-defense case. The court said in footnote five, "Evidence of battered-woman syndrome is ordinarily offered in self-defense cases. It has been used to aid the jury in assessing the reasonableness of the defendant's apprehension and the imminency of death or serious bodily injury. (cites omitted) In this case, however, defendant did not offer the evidence for these purposes and we need not address the admissibility of battered-woman-syndrome evidence in self-defense cases." Because defense attorneys are not using ARS 13-415, attorneys continue to use outdated and out moded theories on domestic violence such as Battered Women's Syndrome. The experts who could help in the cases are being ignored at peril to the client.

Due to pervasive gender bias, women are not finding justice in our criminal courts any more than they do in civil or domestic relations.

Recommendations

The failures of Arizona's law, enforcement, training and policy conflict with all five of the Model Code principles.

Prevention, Protection and Accountability

By failing to arrest for violations of the order of protection, law enforcement is missing an opportunity to prevent future violence, to protect the victim from additional violence, and to hold the perpetrator accountable.

By refusing to confiscate guns and by not making perpetrators prohibited possessors in an order of protection, law enforcement and the courts are ignoring the lethality of weapons and are not preventing future homicides or protecting the victim.

Arizona needs a dominant aggressor statute or policy in order to prevent the plethora of dual arrests that re-victimize the victim and fail to hold the perpetrator accountable. The victim cannot rebuild her life (Principle 4) when she has become the accused. Training on dual arrests and enforcement of the law that prohibits cite and release is also necessary.

By lax enforcement of probation and court ordered BIP's, probation and counseling systems are not:

- providing prevention by changing behavior,
- providing protection by preventing future crimes,
- providing accountability for violators.

This seems to be in direct violation of ARS 36-517.02 that requires professionals to warn potential victims.

If prosecutors were required to justify their reasons for dropping a domestic violence case, that would increase prevention, protection and accountability. Likewise, the discussion must occur about "no-drop' policies and their potential for improving Arizona's response to victims of violence.

Two sexual assault statutes need to be eliminated:

- allowing prisoners to be charged with a felony when assaulted
- requiring a higher standard of proof and lesser penalty for spouse sexual assault

Domestic violence re-education classes (when proven effective) for the perpetrators and domestic violence support groups in the prisons would go far to preventing re-victimization and recidivism upon release.

Prevention and Accountability

Arizona has serious lapses in its treatment of recidivists. Record keeping and cross jurisdiction communication is inadequate to know how many times an abuser has been convicted before sentencing him again. Diversion is allowed contrary to the Model Code recommendations, and a perpetrator who failed the first BIP is allowed to enter another or the same program again. The enhanced penalty goes into effect after the third rather than the second offense. In most municipalities there is no supervised probation, and thus the penalty is meaningless.

When there is no probation officer, regular visits to the court reinforce the seriousness of the offense and the accountability of the perpetrator. A judge in Sierra Vista has begun a program of calling the perpetrator back to court on a regular basis to obtain status reports. This costs no money and would be a simple procedure to put into place. Previous studies have shown that the behavior of the judge, and even a lecture from the bench, can have an enormous impact on the perpetrator and his understanding that domestic violence is not acceptable in our society. Judges need to know whether a case involves domestic violence when considering any kind of release. They must be trained on the lethality of domestic violence in order to make decisions that will protect the victim and hold the perpetrator accountable.

Rebuilding the lives of victim-survivors

In conjunction with the ASU law clinic for victims rights, the issue of compliance with the victims rights statutes in Arizona needs to be examined.

Though we have not heard of perpetrators being confined to the home of a victim, a statute prohibiting such confinement should be in place.

Shelter staff and service providers need to be trained on sexual assault issues within the context of domestic violence in order to offer appropriate services and interventions to the victims who seek those services.

Accountability

The trend toward refusing to prosecute if the victim "entices" the defendant must be stopped immediately. This is nothing short of victim-blaming. It is prohibited under VAWA II funds and no Arizona agency receiving such funds should be allowed to continue this practice.

Consistent gender bias has been identified in the judicial system nationwide and in Arizona. The called for gender bias study is 12 years overdue. Justice for victims can't wait. Accountability in all facets of the system is essential.

Chapter 3 - Civil Orders for Protection

Sec. 301 – Eligible petitioners for order

The Model Code language is simpler than the five paragraphs of the relationship definition in Arizona's law. The Model Code also says "is or has been" a victim making it clear that past violence is a reason to grant an order whereas Arizona restricts past acts to one year (ARS 13-3602(E)(2).

However the Arizona language is better where it states that an order shall be issued when there is reason to believe violence may occur. (E)(1). The focus is appropriately put on prevention.

The Model Code allows a parent or guardian to file on behalf of a child victim. Arizona law ARS 13-3602(A) allows the parent to do so as well but in practice, many judges refuse to put children on orders of protection whether the children are direct or indirect victims.

The Benchbook for Orders of Protection, Injunctions against Harassment, and Injunctions Against Workplace Harassment in Domestic Violence Cases, August 2001 says they should include the child if the judicial officer has a reasonable belief that harm may result to the child or determines that the alleged acts of domestic violence involved the child.

However, the order itself reads: NOTICE TO PARTIES This is not a custody or visitation Order. You can only file for custody or visitation as a Title 25 action in Superior Court. All violations of this Order should be reported to a law enforcement agency; not the Court. Either party should notify this Court if an action for dissolution (divorce), separation, annulment or paternity/maternity is filed.

These seemingly conflicting provisions and the judges hesitance to prohibit violent parents from access to their children result in many children being placed in danger. We are aware of a case where the Maryvale Justice Court judge refused to include the children on the order but the clerk there told her to go to Superior Court and get another order of protection with the children on it. She did go to Superior Court, got a second order of protection though the judge there knew of the first one, and put the children on it. The defendant had been physically abusive to the 2-year-old boy and 9-month-old twin girls. This duplication is nonsensical and illustrates the failure of the Justice Court to understand and/or follow the law and the Bench book. The children themselves have a right to be free from harm but this is being mainly ignored. Arizona law has recognized that a child who witnesses violence is harmed as well. ARS 13-702 (C)(17) Therefore, the refusal of judges to put the children on an order of protection is a refusal to protect the children.

Sec. 302 – Uniform form required for petitions and order; required statements in petitions and order; duty of clerk to provide petitions and clerical assistance

The Arizona Supreme Court issued an administrative order 98-70 requiring that all courts use standardized forms. Courts are required without charge to provide forms to all parties. ARS 13-3602(D). The clerks are not obligated to give clerical assistance.

Policies adopted by the Supreme Court direct that all judicial officers who may issue orders of protection and injunctions against harassment and clerks and staff who assist them SHALL attend training on domestic violence protection orders.

Suggested language on the order is: Violation of this order may be punished by confinement in jail for as long as ___ and by a fine of as much as ___. If so ordered by the court, the respondent is forbidden to enter or stay at the petitioner's residence, even if invited to do so by the petitioner or any other person. In no event is the order for protection voided."

The language on the Arizona form states: WARNING TO DEFENDANT This is an official Court Order. If you disobey this Order, you may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this Order.
NOTICE: Only the Court can change this Order. Nothing the Plaintiff does can stop, change, or undo this Order without the Court's approval. You must return to Court to modify (change) or quash (stop) this Order. If you disagree with this Order, you may ask for a hearing by filing a written request for hearing with the Court named above. This Order is effective for one year after original service on you and is valid nationwide.

The Arizona language seems to comply with the Model Code and seems in fact to be stronger. Apparently it is not strong enough as defendants, law enforcement, prosecutors, and judges still think that the order is void and cannot be enforced if the plaintiff allegedly "invites" the defendant to violate the order. The Chandler prosecutor stated in a meeting with Allie Bones, Systems Advocate, that he intended to prosecute victims. By June 2002, he had and AzCADV is assisting the victim. Anecdotally we have heard of other cases in Gila County, Verde Valley and Tucson. Andrew Klein, National Criminal Justice Researcher, Boston, MA states in the National Bulletin on Domestic Violence Prevention, Vol. 8, No. 6, June 2002, "Retaliatory, mutual ineligible orders should not be granted. However, the idea that hordes of victims come to court and lie to prosecute hapless men is unfounded and ridiculous. Eighty-five percent should be the rate for protective orders granted; this is the percentage granted in Massachusetts over recent years." In Arizona, the rate is 83%, within national standards. ARS 13-3602(J) should be made stronger to make it clear to law enforcement, prosecutors and judges that the order is against the perpetrator and the perpetrator is to be held accountable.

This is also a training and enforcement issue. The Administrative Office of the Courts (AOC) needs to issue another strongly worded administrative order that plaintiffs cannot void orders by their behaviors. In what other court order does the court allow the parties to unilaterally change it? Again, this is an example of the system refusing to hold the perpetrator accountable.

Sec. 303 – Jurisdiction, venue; residency not required to petition

Any court in the state can issue and enforce an order of protection regardless of the location of the plaintiff and respondent. ARS 13-602(A) This exceeds the Model Code suggestion.

Sec. 304 – Continuing duty to inform court of other proceedings; effect of other proceedings; delay of relief prohibited; omission of petitioner's address.

The address of the plaintiff can remain secret. ARS 13-3602(C)(1). Likewise all parties are under a continuing order to inform the court of further proceedings in other courts. See section 301 above.

Sec.305 – Emergency order for protection; available relief; availability of judge or court officer; expiration of order

The Model Code orders may include possession of an automobile and custody of children. Arizona's do not. All matters regarding community property and custody of children must go to Superior court in a dissolution action.

The Model Code emergency order expires after 72 hours. Arizona's emergency order is in ARS 13-3624. It requires that in counties with a population of more than 150,000 persons, emergency orders must be available when the court is not open. In counties with less population, an emergency order may be issued by telephone and a release order shall be registered. The order may be issued if there is reasonable cause to believe that a person is in immediate and present danger based on a recent incident of actual domestic violence or the person's life or health is in imminent danger. The same relief is available as in a regular order. The order expires at the close of the next business day. The judge issues the order but a police officer actually writes it out and signs it on the scene.

Sec. 306 – Order for protection, modification of orders; relief available ex parte; relief available after hearing; duties of the court; duration of order

The Arizona order (ARS 13-3602) has all the same provisions as the Model Code except that the automobile, rent and other costs cannot be ordered and no child custody or visitation can be ordered. All such orders must be made in Superior Court in the context of a dissolution or comparable suit.

The Model Code requires expedited service for orders. ARS 13-3602 (Q) states that service of an order of protection has priority over other service that does not involve an immediate threat to the safety of a person.

Sec. 307 – Required hearings; duty of court when order for protection denied

The Model Code requires a protest of the order to be made within 30 days. In Arizona, unlike any other type of legal action, there is no limit to when an appeal can be filed. ARS 13-3602 (I). There should be a time limit for an appeal for the purposes of finality of decision making and the ability of the victim to go forward in her safety plan. The respondent only gets one hearing, but once it is requested, the hearing must be held in five days if the respondent has been excluded from the house; 10 days otherwise.

Sec. 308 – Effect of Action by petitioner or respondent on order

The Model Code states, "If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection."

This is a serious problem in the Arizona law. (See section 302 above) Even though the language on the front of the order is clear that the actions of the plaintiff cannot change or modify the order, police, prosecutors and judges around the state are violating the law and arresting, prosecuting and sentencing women for allegedly violating an order of protection. Often times they don't even arrest the perpetrator for the underlying violation.

The language of the Model Code "firmly underscores the principle that court orders may only be modified by judges and rejects the notion that any party, by his or her

conduct, can set aside or modify the terms and conditions of an order for protection, even by agreement of the parties. The remedy for the victim or perpetrator seeking to be excused from any provision of an order of protection is to petition for modification… Likewise, this section gives unequivocal direction to law enforcement officers that orders for protection are to be enforced as written and that no action by a party relieves the duty to enforce the order."

In no other situation does a judge allow his/her order to be unilaterally changed by a party. They would call that contempt of court and put the violator of the written order in jail. In no other law designed for protection of a victim does the prosecutor turn the tables and haul the victim to court. In every situation, officers claim they want clarity and simplicity so they know how to enforce an order. Yet here, they reject clarity for the vague standard as to whether she "invited" the perpetrator.

The only reason for this behavior is discrimination against victims of intimate terrorism, primarily women. This is a violation of the 14th Amendment's requirement of equal protection under the law.

Sec. 309 – Denial of relief prohibited

Passage of time from the violent occurrence to asking for an order cannot be used to deny the order. In Arizona, the plaintiff must file the order within one year of a past act. ARS 13-3602 (E-F) The time the respondent is in jail or out of state is not counted.

Limiting the time period to one year is a failure to understand the dynamics of violence and particularly stalking. Perpetrators do not stop when a divorce is final. They do not stop though years may pass. A recent case involved a three-year period when the victim was out of state to avoid the violence, including a threat to murder. When she returned, the behavior began again. The judge said that because the violence had not occurred for three years, the defendant was no longer dangerous. The judge failed to consider that the only reason the defendant had not attacked the victim was because she, not he, was out of state. This kind of ignorance of the dynamics of violence against women is appalling but common on the bench.

Sec. 310 – Mutual orders for protection prohibited.

ARS 13-3602(H) states that the court shall not grant a mutual order. However, the court may grant a cross order if both parties file a petition and meet the statutory requirements. In spite of the statute however, judges are acting as if the order is mutual when they claim that it applies to the petitioner as well, and thus they can sanction the petitioner for what they claim is a violation. So, as it often happens, while the legal language is there, the implementation is lacking because the culture remains victim-blaming.

Sec. 311 – Court-ordered and court-referred mediation of cases involving domestic or family violence prohibited

The Model Code is itself lacking in this section. It only speaks of not ordering parties to mediation regarding an order of protection. However, the problem in Arizona is that the court is ordering the families to mediation in child custody disputes. ARS 15-403 (R) states that the court may not order the parties to joint counseling. The courts are taking a very narrow view of the definition of "counseling" and claiming that they can

order the parties into joint mediation, dispute assessment, or psychological examination in a custody dispute because it is not "counseling".

This violates the intent of the statute and the Model Code. The commentary states, "Violence, however, is not a subject for compromise. A process that involves both parties mediating the issue of violence implies that the victim is somehow at fault. In addition, mediation of issues in a proceeding for an order for protection is problematic because the petitioner is frequently unable to participate equally with the person against whom the protection order has been sought." To this argument, the courts claim that they are not mediating "violence" but custody. Again, they are making a distinction without a difference. The victim of that violence is unable to participate in the process equally with the perpetrator. Her legitimate safety fears for herself and the child(ren) may not be articulated or may not be heard in a joint process.

This is a real problem in Arizona. Repeatedly women call the ACADV legal advocacy line to complain about being forced into joint meetings with the abuser. They report they beg the conciliation court not to do this but are ignored. Reports have come from many counties including Maricopa, Yavapai, Mohave, and Pima.

Sec. 312 – Court costs and fees

Pursuant to a statute passed in the 2000 legislative session, LAWS 2000, Chapter 255, fees for orders of protection no longer exist. However, until recently, some courts still had signs up in their courts telling petitioners that an order is $5.00. In March 2002, it was reported that such signs were still up in the Superior court in Santa Cruz County.

Pursuant to a statute passed in the 2002 legislative session (H.B.1394), all fees for service of orders of protection are abolished. Some counties did not charge for service before e.g. Yuma.

Sec. 313 – Court-mandated assistance to victims of domestic and family violence.

In ARS 13-3602(D), courts are mandated to make reasonable efforts to provide to both parties a list with emergency services and local counseling. In A.O. 98-66, courts shall provide victims with safety plans. The Supreme Court Administrative Offices of the Courts has developed a statewide resources list and a model safety plan. Copies can be obtained on the internet at http://www.supreme.state.az.us/dr.dv.htm. Reportedly some courts are providing safety plans (Yavapai) but most are not.

The most serious breach relates to the children. Even with much evidence of violence to the children or in front of the children, many judges refuse to put the children on the order of protection. This is not providing assistance to victims.

Sec. 314 – Registration and enforcement of foreign orders for protection; duties of court clerk

The registration of orders under the Registration of Foreign Judgments Act has been mooted by the VAWA II full faith and credit provisions. However, full faith and credit remains a problem since some judges on the Navajo Nation are not giving full faith and credit to Superior Court orders.

Likewise military orders are not given full faith and credit. So the victim needs to get two orders; one for on the base and one for off.

State 315 – State registry for orders of protection

Currently the sheriff of each county keeps a registry to verify the orders. A new Court Protective Order Repository began October 15, 2001. It can be accessed by the web site below.

http://www.supreme.state.az.us/publicaccess/default.htm

There are 180 courts in Arizona. There have been 7,133 orders entered into the system, 5,569 issued, 565 denied, 3,058 served, 382 quashed. There have been 1,053 hearings, and 220 orders have been modified from courts in the repository.

The count and percentage by order type is:

TYPE	NUMBER	%	
EOP	4	0	Emergency Order of Protection
IH	3135	44	Injunction Against Harassment
IWH	73	1	Injunction against Workplace Harassment
OP	3921	55	Order of Protection

(as of March, 2002)

"As with arrests, a better measure to judge the proper utilization of protective orders is how many are issued relative to the jurisdiction's population. The number should be eight orders for every 1,000 population." (Andrew Klein supra) Arizona's rate is 7.3 i.e. below the national average. (2000, Domestic Violence Statistics 1995-1999, Phoenix, AZ ACADV) Once again, those policy makers in Arizona who are alleging that orders of protection are being misused in Arizona have absolutely no proof for their allegations. In fact, all the proof points to the opposite result; Arizona is underutilizing orders of protection.

Recommendations

Prevention

The initial motivation and current language of Arizona's order of protection statute emphasizes prevention. An order can be granted not only if violence has already occurred but if it may occur. The intent was to prevent future violence.

That intent is being violated by the current problem of refusing to enforce the order if the petitioner allegedly invited contact with the defendant. That is contrary to the law, the policy, the original intent, common sense and victim safety. It is one more way to blame the victim and not hold the perpetrator accountable. It must be stopped immediately.

Protection

The victim is not being protected when the order is not enforced. In fact, the victim is put into increased danger when the defendant knows he will not be arrested for violating the order and the victim knows that calling the police will not be effective.

Early Intervention

The hesitancy of the court to put children on the orders of protection also violates the principle of early intervention i.e. to protect the child and prevent harm to the child.

Rebuilding the lives of victim-survivors

The victim is seeking safety by getting an order. To refuse to enforce the order prohibits her from rebuilding her life. Both parties know that the order is a chimera. Without enforcement, it does not offer protection to her or accountability for the perpetrator.

To obtain an order of protection, the courts will only consider as evidence, violence which has occurred in the last year, absent certain conditions e.g. the perpetrator is in jail, out of the country, etc. This also does not allow the victim to rebuild her life. For various reasons, the victim may not be able to get an order until after more than a year has passed since the last incident. We know that abusers do not stop their abuse after separation. They can go on for years harassing the victim, and if there are children, they can use visits to continue to abuse the mother. There can be several years of peace and then the abuser will again start the abuse. If courts understood the dynamics of violence, they would not limit the evidence to only the previous year.

New Mexico enhanced its orders of protection by providing that an issuing court may order the respondent to reimburse the petitioner for all expenses related to domestic violence. Not only does this allow the victim to rebuild her life, but it puts the responsibility squarely where it belongs – on the perpetrator.

Accountability

One of the worst examples of refusing to hold the perpetrator accountable and blaming the victim is the trend toward charging the victim with violating her own order, charging her for contacting the defendant, and refusing to enforce the order because of the alleged behavior of the plaintiff, all of which are legal impossibilities.

Chapter 4 - Family and Children

401 – Presumptions concerning custody

The state legislature of Arizona has made a very strong public policy statement regarding the importance of considering domestic violence in child custody cases. In ARS Chapter 25, the issue of domestic violence and its impact on custody is mentioned ten times.

ARS 25-403 (E) says that joint custody shall not be awarded if there is significant domestic violence. ARS 25-403 (M) says that the court shall consider evidence of domestic violence as being contrary to the best interests of the child. The court shall consider the safety and well-being of the child and of the victim of the act of domestic violence to be of primary importance, and the court shall consider a perpetrator's history of violence.

ARS 25-403 (N) says that if a person seeking custody has committed domestic violence, there is a rebuttable presumption that an award of custody to that person is contrary to the child's best interest. ARS 25-403(P) says that if a parent has committed domestic violence, that parent has the burden of proving that visitation will not endanger the child. Even if that burden is met, the court shall place conditions on visitation that protect the child and the other parent from further harm.

ARS 25-403(Q) says that to weigh a parent's relocation against that parent, the court should consider whether the relocation was caused by the domestic violence of the other parent. ARS 25-403(R) says the court shall not order joint counseling between a victim and perpetrator of domestic violence. To determine whether domestic violence has occurred, the court shall consider various factors including findings of guilt from other courts (ARS 25-403(S)). A motion for modification cannot be made within a year unless there is domestic violence (ARS 25-403(T)).

Even in the Uniform Child Custody Jurisdiction Act, ARS 25-1037 and l038, the occurrence of domestic violence is a significant factor in determining jurisdiction. And domestic violence can be a factor for suspending visitation or custody ARS 25-408(M)).

A legislature could hardly make a stronger statement of the importance of considering domestic violence when determining custody. It certainly complies with the Model Code.

The problem lies not with the written law, but the implementation. Judges either sidestep the statutory requirements by improper delegation of judicial authority to conciliation court counselors, family court advisors, psychologists, guardians-ad-litem, court masters or a variety of other persons courts put between themselves and accountability for their decisions. Some judges are more straight-forward and simply refuse to recognize domestic violence, claim it is not significant, or claim that it is less damaging to the children than some flaw of character or breach of action by the victim. Because lower courts have very broad discretion in family law matters, appellate courts are loath to overturn lower court decisions.

Even the National Association of Judges, (Small Justice: Little Justice in Family Court, Garland Walker, Boston College, video, 2001) based on proof from several studies around the country, admit that when abusers ask for custody, they win 70% of the time. In Violence Against Women Act (VAWA) II, Congress explicitly found in Title II, Sec. 201 (16) that, "Despite the perception that mothers always win custody cases, studies

show that fathers who contest custody win sole or joint custody in 40-70% of cases." Yet when these facts are pointed out to legislators, decision makers and judges, they react in an emotional rather than a logical way and refuse to believe the evidence. Bias against women in the courts is rampant in Arizona. In 1990, the Arizona Supreme Court ordered a gender bias study to be done. Twelve years later, it is not even started. Dozens of women have testified at the Domestic Relations Reform Subcommittee about the injustice in the courts and the failure of the courts to protect children. Yet the legislators on that committee ignore the evidence and introduce bills to put children in harms way.

At the public hearing on judicial performance in Phoenix March 20, 2002, 13 of 15 speakers told of grave injustice to victims of violence and their children in domestic relations court. A panel member said after the hearing, "We hear the same thing every year." Then why is no action taken?

In the Tucson hearing March 13, the panel refused to allow the advocates to present testimony at all on the problems in the court. Congress itself has found in VAWA II, Subtitle C- Family Safety, that "(5) existing Federal and State laws are inadequate to protect parents from domestic violence and to protect children from sexual assault and may punish them when they seek to protect themselves; and (6) failures of State judicial and child protection systems may result in the inappropriate placement of children in the custody of abusive parents or punishment of non-abusing parents who attempt to protect themselves or their children." Arizona is not alone in this problem; it is nationwide.

Part of the problem is lack of judicial training, part is gender bias, and part is the use of the discredited junk science of Richard Gardner called Parental Alienation Syndrome (PAS) in which the parent who reports violence and abuse is assumed to be lying and the child given to the other parent. It is yet another attempt at "shooting the messenger". Like Freud before him, Gardner finds that allegations of abuse are common in divorce. That should be no surprise since the Civic Research Institute finds that 80% of divorces nationally do have domestic violence as a part of the dynamics. But rather than working to eliminate the violence, Gardner, like Freud, instead claims the victim is a lying, hysterical, vindictive woman and the child should be given to the accused. The courts have in the past even given joint seminars with psychologists who tout this unscientific claim. Yet Congress in VAWA II, Title II, Section 201 (17) finds that , "According to the American Psychological Association, there is no reliable empirical data to support the so-called phenomenon of "parental alienation syndrome," although courts and custody evaluators frequently use such terms to discount children's reasonable fear and anger toward a violent parent. This "syndrome" and similar ones are used almost exclusively against women." Yet, in Maricopa County, on the list of court approved mental health experts, they designate whether they are "experts" in alienation. The harm done to the children by decisions based on this myth is incalculable.

ACADV is addressing these problems by Courtwatch, the Battered Mothers Testimony Project, the Mother's Rights Network: Protecting Children from Abusive Parents and other means. But official state action is needed to stop this injustice. Language such as the following may be necessary to mandate that judges follow the law, which does seem a bit redundant. "In a custody case where there is evidence of domestic violence, the presumptions in ARS 25-403 shall be applied and the case may not be

ordered to mediation, counseling, dispute assessment, custody evaluation, family court advisor, psychological evaluation or any other kind of evaluation."

402 – Factors in determining custody and visitation

Again, Arizona has in ARS 25-403 all of the requirements of the Model Code. Implementation is what's missing. The Model Code and Arizona law require that the court consider the safety and well-being of the child and the victim. As stated in section 401 above, Arizona has provided at least 10 provisions to protect victims and children. In Mews v. Houle, 1 CA-CV 01-0236, Department D, AzCADV filed an amicus brief on appeal because of the lower court's failure to take these provisions into consideration in giving custody to the respondent who had three domestic violence convictions and 17 arrests. The appeals court ruled "Second, the court did hear evidence related to the history of domestic violence on the part of Father, but these incidents were convictions of misdemeanors in municipal court, involving stalking and trying to kiss (sic) Mother. The most recent incident was in l997, so the court reasonably could have found that the chargers were too remote to be outcome-determinative. Also, Dr. Ronald Lavit, PhD., testified that he was 'not concerned about physical safety of the child as it relates to the father and specifically, father physically abusing the child.'" The decision illustrates several problems. First, most domestic violence incidents are litigated as misdemeanors because county attorneys refuse to prosecute them properly. It does not speak to the seriousness of the acts or the harm. Second, the incident did not involve trying to "kiss" mother but trying to kill mother. How the court could have so misinterpreted the conviction is unknown. Third, the most recent incident was in l997 because the mother fled the state to the other coast to escape the repeated violence. As soon as she returned (for her father's final illness and death), Mews started the stalking and harassment again. Fourth, the statutes clearly require that the court consider the safety of the victim and the child. Lavit claims not to fear harm to the child but is silent on harm to the victim, the mother. Would not killing the mother harm the child? Statistics show that 65% of spouse abusers also abuse the children. (VAWA II, Title II, Sec. 201 (3)) If either the judges or the psychologist had been properly educated in the dynamics of violence, the safety of the victim, or the best interest of the child, perhaps this absurd result would not have occurred.

In fact in VAWA II, Title II, Sec. 201(9), Congress found, "According to a 1996 report by the American Psychological Association, which Congress views as authoritative on matters of domestic violence and child custody and visitation determinations, custody and visitation disputes are more frequent when there is a history of domestic violence. Further, fathers who batterer mothers are twice as likely to seek sole custody of their children and they may misuse the legal system as a forum for continuing abuse through harassing and retaliatory legal actions." If the judges had understood this part of the law, perhaps they would have understood that the abusers history of violence was significant and that he was using the legal system to continue to abuse his ex-wife.

Congress further found, (13) "Although courts should diligently protect the interests of both parents in frequent and continuing contact with their children, in the case where one parent has committed domestic violence against the other parent, protection of

the other parent and the children is a vital consideration that should take precedence." In the Mews. v. Houle case, protection of the mother was given no consideration.

In the 2002 legislative session, Senator Darden Hamilton, co-chair of the domestic violence and sexual assault state plan task force, introduced two bills reflecting concerns with the family court system. SB 1433 would have prohibited the use of PAS in Arizona courts until it is recognized by the American Medical Association or the American Psychological Association. SB 1435 would have stripped court appointed custody evaluators of the total immunity they have now and given them only limited immunity. Neither bill passed but the introduction of the bills illustrates the level to which these two problems have risen.

Arizona has a provision (ARS 25-403(A)(7)) requiring the court to take into consideration which parent has been the primary caretaker. The current statute reads, "If one parent, both parents or neither parent has provided primary care of the child." The best evidence of who will care best for the child in the future is who cared for the child in the past. However, in the 2002 legislative session, a bill was introduced which said that one of the factors for the court to consider was "the past practice, if any, of each parent regarding the child's care and the willingness and ability of each parent to provide for the child's care." So even though one parent may have expressed no willingness and exhibited no ability to care for the child during marriage, suddenly upon the filing of a petition for divorce, if that parent simply says s/he would like to care for the child, that is given equal weight to the many years of caretaking done prior. That parent who has not participated in caretaking prior to a divorce may have the ability to hire a caretaker or may re-marry or move in with his mom and that is weighed equally with the prior care of the natural mother.

The American Law Institute model domestic relations code, while severely flawed in other ways, does focus predominantly on the past caretaking patterns in the family to determine the allocation of responsibility for children after separation. It also recognizes that abusers often use children to continue to abuse their victims. The court must acknowledge all forms of abuse of any degree or severity. Arizona's statute is flawed by requiring only "significant" violence to be considered. What is not significant to a judge may be very significant to a victim who has intimate knowledge of the perpetrator's behavior patterns. This is recognized in Arizona criminal law at ARS 13-415 by requiring that the perspective of "reasonableness" be that of the victim of previous violence by that perpetrator.

Further, the refusal to allow victims to leave the state for their own safety and that of their child not only violates the provision about safety but also violates the First Amendment rights of the victim of violence to move. ARS 25-408 (G)(1) allows a parent with sole custody to relocate " … by circumstances of health or safety…" which is very weak protection to victims of violence. If the parent has joint custody, she doesn't even get that much. (ARS 25-408(G)(2). Every year in the legislature, bills are introduced to mandate joint custody in all cases. At a time when states who piloted joint custody are moving away from it because of its failure, Arizona rushes headlong into it.

One study of shelter residents found that 35% of batterers threatened to take the children in a custody action, 25% used visitation as an occasion to verbally abuse the victim, 10% used visitation to physically abuse the battered woman, and 25% of the batterers kidnapped their children. (See Marsha B. Liss and Geraldine Stahly, Domestic

Violence and Child Custody, in Battering and Family Therapy: A feminist Perspective 181, at 182-3, noted in Joan Zorza, Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women, 29 Fam. L.Q. 273, 279, 1989.) The more contact an abuser has with his children, the greater the risk that he will continue to abuse the mother or abduct the children. Thus, granting unsupervised visitation to a batterer is often highly unsafe. (See Rebecca L. Hegar and Geoffrey L. Grief, Abduction of Children by Their Parents: A Survey of the Problem, 36 Social Work 421, 423-24 (1991).

Sec. 403 – Presumption concerning residence of child

Arizona has a presumption against custody to the abuser; it just doesn't follow it. The only case interpreting the law, Canty v. Canty, 178 Ariz. 443, 874 P 2d 1000 (1994) held that the judge did have to consider the violence but then could ignore its impact in the final decision. This was not the intent of the statute.

Sec. 404 – Change of circumstances

The Model Code defines domestic violence as a "change of circumstances" such that a custody or visitation arrangement may be modified.

ARS 25-403(T) requires a year to pass before a modification can be requested unless there is evidence the child's present environment may endanger the child. If the parents have joint custody and domestic violence has occurred, the victim may petition. This does not apply to a sole custody order. Or if after six months, one parent is not living up to the joint custody order, a petition may be filed. Many parents request joint custody to lower their child support, which is contrary to ARS 25-403(W), and then do not in fact have the child during their time.

ARS 25-411 states that to modify any type of order a person has to file a petition first and the court must find adequate cause for hearing the motion. Domestic violence is not listed as an adequate enough cause.

In ARS 25-408(M) if one of the parents is charged with a dangerous crime against children, child molestation, or domestic violence in which the victim is a minor, the other parent can petition for an expedited hearing and the judge can immediately stop visitation.

Sec. 405 – Conditions of visitation in cases involving domestic and family violence

The Model Code requires that if there is violence, conditions must be put on visitation to protect the child and victim including keeping the address confidential and having a supervised exchange or neutral exchange point.

Arizona has these same provisions. ARS 25-403(P). The section even states that the burden of proof is on the perpetrator of violence to show that visitation will not harm the child or the child's emotional development. Instead, the courts put the burden of proof on the victim and require her to show that the perpetrator is dangerous to the child.

In 1986, when the first statute passed in Arizona to mandate that violence be taken into account in determining custody, the chair of the legislative committee asked the lobbyist why such a statute was necessary. Obviously anyone knows that the person who commits violence should not get custody or unsupervised visitation with the child. Unfortunately, the court did not know this and the then presiding judge testified against

the bill claiming that judges needed discretion to give custody to violent parents. The legislature may have won the battle, but the judges won the war because, 16 years later, they are doing exactly that.

Sec. 406 – Specialized visitation center for victims of domestic or family violence

ARS 25-410 allows a court to order a local social service agency to exercise continuing jurisdiction over the case to ensure that custodial or visitation terms of the agreement are carried out. The court can allocate reasonable fees if approved by the Supreme Court.

Due to lack of funding, visitation centers are rare. Most parents are left to their own devices to find a supervisor. Paying for it is often difficult. The victim should not be made to pay for the supervision because it was not her behavior that caused the need. To force her to pay for the visitation puts the responsibility for the violence on the victim.

A further problem is ordering a social service agency to have continuing jurisdiction over the case. Again that is penalizing the victim for the behavior of the perpetrator. She is denied privacy, is subject to government intrusion into her private affairs, and could even have the children taken away not because of anything she did, but because of the behavior of the perpetrator. The system must stop blaming the victim and start holding the perpetrator accountable.

Sec. 407 – Duty of mediator to screen for domestic violence, violence during mediation referred or ordered by court

ARS 25-403(R) says the court shall not order joint counseling between a victim and perpetrator. The problem is the courts have a very narrow interpretation of "counseling". They claim that mediation, dispute assessment, and psychological evaluation is not "counseling" and so they can do it. They completely miss the reason for the statute is to prevent forced face-to-face contact and to prevent the victim from being silenced due to fear of the perpetrator. A mediator, no matter how well trained or intentioned, cannot level the playing field when there has been violence.

Though the National Council of Family and Juvenile Court Judges recommends strongly against mediation in family law matters, and Congress found in VAWA II, Title II, Sec. 201 (20) "When domestic violence is or has been present in the relationship, shared parenting arrangements, couples counseling, or mediation arrangements may increase the danger to children and to the nonviolent parent," the Superior Court in Tucson is engaging in a study of how mediation has worked in the cases of violence they have forced to mediation. Reams of studies have been shown that mediation is inappropriate in cases of violence. So why is the Tucson Superior Court still spending money studying what is already known? If any state or federal monies are going to courts that order mediation or joint counseling between victims and abusers, that practice should halt immediately.

Sec. 408 – A and B – Mediation in cases involving domestic or family violence

Section A mandates that mediation shall not be ordered which is in concert with the recommendation of the National Council of Juvenile and Family Court judges. Mediation is not appropriate in situations of domestic violence.

The alternative section B allows mediation by a trained mediator with victim protections including a support person in the room.

The Conciliation Court in Maricopa County claims that, upon request, a person will not be forced to go to or through mediation. However, they do force litigants to go to dispute assessment and psychological examination together. Victims complain bitterly about this procedure and the unjust custody agreements that result. The victims feel forced to sign, often while disagreeing vehemently. However, if the victim refuses to sign, she is labeled uncooperative and the dreaded parental alienation syndrome is leveled at her, which almost guarantees she'll lose custody completely. The solution is no forced face-to-face meetings no matter what they are called.

ACADV filed a Freedom of Information Act (FOIA) request with Maricopa Conciliation Court on May 6, 2002 to find out how many victims mark on their intake sheet that they 1) have an order of protection, 2) fear the spouse, or 3) there has been violence and are still ordered into face-to-face contact with the abuser. The first response to the FOIA produced all the forms and documents but did not produce the figures to the most fundamental question. Another FOIA has been sent.

Sec. 409 – Duties of children's protective services

Written procedures for screening for domestic violence are required by the Model Code. Child Protective Services (CPS) does not now have such procedures. A bill was introduced in the 2002 legislative session to require that but it did not pass.

The Model Code requires that if a parent needs to be removed for the safety of the child, CPS shall seek removal of perpetrator, not the child or victim. Anecdotally we hear many cases where women, whose crime is being a victim of violence, are labeled as "failure to protect", charged with child abuse and lose custody of their children. A recent case in New York, Nicholson v. Scoppetta (on appeal), made a very strong statement against the policy of removing children from victims just because the child had witnessed violence. This is punishing the mother for her status as a victim of violence, clearly unconstitutional. It is also extremely harmful to the child as well.

In addition, children are being removed from homes where the husband or boyfriend is abusing both the children and the mother. (Note, Revictimized Battered Women: Termination of Parental Rights for Failure to Protect Children from Child Abuse, 38 Wayne L. Rev. 1549 (1992); Marlene Halpern & Alison J. Busch, Battered Women and Failure to Protect: Is Justice Being Served? Are children being Protected? (1994)). However, no thought is given to the dangers of placing children in foster care though death, physical abuse, sexual abuse, and psychological trauma are all too common in foster care systems throughout the country as evidenced by ample litigation. (Bogutz v. Arizona, No. CV 94-04159 (Ariz. Superior Court, Maricopa County, filed Oct. 1993)). Separating children from their battered parent by placing them in foster care may intensify their sense of loss, trauma, and emotional injury. Further, no thought is given to the fact that leaving the batterer often increases the danger to the battered woman and her children. (Caroline W. Harlow, U.S. Dept of Justice, Female Victims of Violent Crime 5 (1991). In an incomplete review of Arizona's murder/suicides in 2000, half of the women, and often children, were murdered when they were leaving; one was found dead next to her partially packed suitcase.

This punitive reaction from CPS puts mothers into a Catch 22 situation: If they report the abuse, they risk losing the children; if they don't report the abuse, they risk more harm to themselves and the children. Should the abuse be reported by someone else, they could be found in violation of ARS 13-3620 which requires parents to report. At the time the statute added parents, advocates objected for this very reason but did not prevail. Requiring parents to report and then penalizing them when they do discourages safety for both women and children. "One simple and key principle is that woman protection is frequently the most effective form of child protection." (Kelly, When Woman Protection is the Best Kind of Child Protection: Children, Domestic Violence and Child Abuse, *Administration*, vol 44, no 2 (Summer 1996), 118-135).

Moreover, there is an inherent class, race, and sex bias in the foster care system that disproportionately affects poor women. (Douglas Besharov, How Child Abuse Programs Hurt Poor Children: The Misuse of Foster Care, 22 Clearinghouse Rev. 219 (July 1988). In intact families, we do not hold parents liable for all the physical or sexual harm done to children let alone the emotional and psychological harm done. Do we remove children from public housing projects because they are undesirable places to live and expose the children to trauma? Do we remove children from families in which unhealthy or negative relationships exist? Or parents who pay no attention to the children at all? Why are children removed only in cases where the woman is battered? Why do we focus on keeping the family together when the male, sometimes the batterer, is present, but ripping the family apart when the remaining parent is the battered women? "Holding victims of violence strictly liable for the harm done to their children is as far and efficacious as holding parents strictly responsible for their lack of wealth." (Atkins & Whitelaw, Turning the Tables on Women: Removal of Children from Victims of Domestic Violence, Clearinghouse Review, Special Issue, page 268, 1996)

In some states (VT, NY, IL, NE) parental rights have been terminated or dependency found without any consideration of the harm to the child by the violence, the harm to the child of being removed from the mother, the harm to the child of going into foster care, or the victim-blaming of the court's behavior. Sometimes the child is removed from the protective parent without even charging the abusive parent with the underlying abuse or determining who is the batterer and who is the victim.

Kristian Miccio says, "It defies logic that the state would hold a mother liable for failing to stop her own abuse. We, as a society, are holding mothers accountable for conduct they did not engage in, conduct that, until recently, was socially permissible and conduct that authorities are still loath to stop. It appears that state action in such matters is as much a consequence of societal impotence as it is of expedience. It is easier to blame mothers than to change intra-familial dynamics that are harmful to mothers, to children, and ultimately to the community at large." (In the Name of Mothers and Children: Deconstructing the Myth of the Passive Battered Mother and the "Protected Child" in Child Neglect Proceedings, 58 Alb. L. Rev 1087 (1995). Taking children from battered mothers because they can't stop the violence is asking a single woman to do what the state, with all its money and powers of arrest, investigation, prosecution, conviction, and mental health commitment, cannot or will not do – stop the violence. Instead, we continue to hold her accountable for his behavior.

If the mother does attempt to prevent the violence by withholding access to the batterer, if he's the father, she will then be punished in both the criminal and domestic

relations/family court. She can be charged with ARS 13-1302. She has a defense to prosecution under (C) if she can show that the reason for withholding access was to protect the child from violence. But in the meantime, she's been arrested, put in jail with no one to care for the children, perhaps lost her job and most likely assigned a public defender who will tell her to plead to a lesser charge or settle for probation. In the domestic relations/family court, she'll be penalized under ARS 25-403(A)(6), the "friendly parent" provision, which requires the court to consider which parent is more likely to allow frequent and meaningful contact with the other parent. There is no exception if the reason for denying the contact is protection from abuse. Instead, she will be labeled as an "alienating" parent and probably lose custody altogether. She has no viable alternative.

The proper response is not news; it has been known for some time. Stark and Flitcraft (1988, p. 97) state, "The child abuse establishment assigns responsibility for abuse to mothers regardless of who assaults the child, and responds punitively to women, withholding vital resources and often removing the child to foster care, if women are battered or otherwise fail to meet expectations of "good mothering" … One result is that men – who are the majority of child abusers – are invisible. …The best way to prevent child abuse is through female empowerment." Yet 14 years later, women are still targeted and blamed for the behavior of the abuser.

Suggestions to remedy the problem include:

- Preventive measures that would offer realistic options to non-abusive mothers by establishing adequate, long-term protective and supportive services to enable the women to escape their violent homes and take their children with them to a safe environment.
- Accessible and affordable day care so mothers are not forced to leave children with abusive husbands, boyfriends, or other persons
- Pre-trial diversion for first time offenders. Batterers get three opportunities before they are incarcerated. Why do mothers get only one?
- All factors must be considered, including whether the mother was a victim of abuse, the extent she was physically and emotionally able to protect the child, the fear of legal action, whether she was physically or financially able to escape the abuser, what previous attempts she had made to escape or stop the violence and the results of such attempts, what assistance she had sought, if any, and whether she received it. In fiscal year 2000-2001, only 37% of those women and children who sought shelter in Arizona received it. We penalize those who cannot escape yet we offer no alternatives.
- The actual abuser must be criminally prosecuted and found guilty before a non-abusing mother can be found liable. The non-abusing mother must receive a lighter penalty than the actual abuser, which is often not now the case.
- The actual abuser must be substantiated for abuse before the non-abusing mother can be substantiated for "failure to protect" (Michigan law)
- When domestic violence is alleged, the non-abusing mother should have an affirmative defense or a rebuttable presumption against a finding of neglect and/or removal of the children. (Texas law)

- Include an "intent" requirement for the non-abusive parent before she can be prosecuted (Dusak v. State, 978 S.W. 2d 129 (Tex. App.-Austin 1998, pet. Ref'd)
- A requirement that the evidence be evaluated from a subjective standpoint of a "reasonable battered woman" as in ARS 13-415 rather than the "reasonable man" standard. A man has never found himself in this situation.
- Cross training and coordination of agency staff and domestic violence advocates
- Recognition of the single parent and child as a valid family unit, absent the abusive parent
- Police officers should arrest perpetrators, treat domestic violence calls seriously by making thorough and accurate reports.
- Prosecutors should charge perpetrators no matter how "minor" the abuse seems to them.
- Judges should convict and appropriately sentence perpetrators as the first line of defense against increased violence leading to death.
- CPS workers should assist victims in getting orders or protection, help them find counsel for divorces, and help them find safe housing if they cannot remain in the home.
- CPS must document abuse by the father and require him to follow a service plan that deals with the issue of violence.
- Attorneys for the mothers must appropriately utilize expert witnesses who can explain the dynamics of violence and judges must let them testify.

Recommendations from the National Council of Juvenile and Family Court Judges, (NCFJCJ)Family Violence Department can be found in "Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice"(1999). Principle X states, "Child protective workers should develop service plans and referrals that focus on the safety, stability, and well-being of all victims of family violence and that hold domestic violence perpetrators accountable." Recommendation 22 states, "Child protection services should avoid strategies that blame a non-abusive parent for the violence committed by others."

Further NCFJCJ recommends that the following issues need to be addressed to deal with this issue:

- Safety of the child witness
- Empowerment of the battered mother
- Restoration of the battered mother and her children
- Batterer accountability

None of these goals are reached by removing the children from the non-abusive mother.

A few initiatives are ongoing in Arizona to deal with this issue. ACADV is engaged in a collaboration with CPS and the court to develop procedures. A pilot project of advocates in dependency court to offer services to the mothers is underway. ACADV has recently obtained a contract with CPS for training about the co-occurrence of child and woman abuse. But vigilance is required, along with training of the attorneys who represent the mothers in dependency cases.

The Model Code requires that services be offered to victims. This is happening only in conjunction with the pilot program of having advocates in the court during dependency hearings. Services remain very underfunded in Arizona.

Other issues in Domestic Relation/Family Court

So many problems exist in the family law arena it is difficult to know where to begin. Child support collection must become more timely and effective in order to help victims escape from grinding poverty. Yet Pima County has recently turned its child support collection back to the State alleging inadequate financial support from the State. This only adds to the delay in collection.

On the child support worksheet, payers get a deduction for joint custody and parenting time. This however conflicts with ARS 25-403(W) that states that joint custody will not be used to lower child support amounts. That provision was specifically put into the law because it is a well known ploy by the father's rights groups to have joint custody ordered only to lower child support payments, not to spend any more time with the children. In fact, studies show that those with joint custody do not pay even their lower child support regularly. Criminal provisions do exist for collection of child support. (ARS 13-3610, 3611, 25-511) They need to be used more often.

Though Arizona law allows the judge to order attorney fees at the beginning of the case so the poorer party can litigate, judges often refuse to do so thus leaving the victim without means to litigate.

Likewise, the law allows an immediate division of liquid assets to allow the poorer spouse to live, litigate, and remain safe. ARS 25-315(B) Again, judges are not doing this thus leaving the victim without funds to remain safely out of the house or to hire an attorney.

Attorneys from the family law section of the state and county bar have reported that in divorce cases, parties are given only 20 minutes per person for an order to show cause for temporary orders and three hours for a full, final custody hearing. This is a violation of constitutional law. Parenting has been recognized as a fundamental right under the Constitution since Stanley v. Illinois ,405 U.S. 645 (1972). To make this decision based on only 20 minutes, that's 10 per side, is egregious conduct violating any concept of fairness and integrity under the law. Most of the time, the temporary decision is the final decision so in one of the most important decisions in a person life, what will happen to their child, and one of the most important decisions in the child's life, who will be the primary parent, the court can only spare 10 minutes. This is an outrage. It certainly does not comply with the statutory standard of the best interest of the child.

Pursuant to ARS 12-401(13), venue for a divorce is in the county where the petitioner resides. If the victim has fled to another county for safety reasons, and the abuser files first, it is very dangerous and disadvantageous for the victim to be forced to return to the county where the violence took place. In order to apply for a change of venue (ARS 12-406) the victim would have to post a bond. Most victims do not have the funds for that. Given the court's refusal to believe allegations of violence, it is doubtful that a venue change would be granted.

Recommendations

Once again, the main problem in family law is not the law per se, but implementation. The problem in implementation is the refusal to seriously take violence into consideration when making family law decisions, ignoring the safety needs of the victim and children, and not holding the perpetrator accountable. By not basing decisions on the statutory factors, all the principles are violated. By not giving weight to the role of the primary caretaker prior to the filing of a petition for divorce, all five principles are violated.

In the CPS system, the use of "failure to protect" against the battered mother also violates all five principles. It does not prevent future abuse, does not protect the children, does not allow the victim-survivor to rebuild her life, and it does not hold the real perpetrator accountable.

Prevention

Living in a home where violence is a norm has many very negative consequences on children. Thus to force children to visit unsupervised or live with the perpetrator not only places the children in danger, but inhibits efforts at prevention. The message that is sent is that violence is normal and acceptable. It also fails to hold the perpetrator accountable for the abuse.

The practice, in Maricopa County, of allocating only 20 minutes for a temporary hearing and three hours for a final hearing when the important issue of custody is being litigated not only violates the Constitution, but also violates the principle of prevention and protection of the child.

Protection

Studies show that 65% of men who abuse their wives also abuse their children. Thus, to give unsupervised visitation or custody to the perpetrator puts children in harms way rather than protecting them. In addition, studies have shown that unsupervised exchanges also put the mother at risk.

The continued use of mediation, even though contraindicated in every study and by every national standard, violates the principle of protection of the victim by requiring face-to-face contact. It also fails to hold the abuser accountable by creating the impression that the parties have equal responsibility for the violence. And it does not allow the victim-survivor to rebuild her life when she must continue to have close contact with the abuser.

The victim should not have to return to the geographical area of the abuse to obtain a divorce. Also, if she has fled to another state, returning for the divorce could be very dangerous. Thus the venue requirement needs to reflect the need of the victim to litigate in safety away from the abuser.

Rebuilding the lives of the victim-survivor

Economic independence is the main need for most survivors in order to allow them to rebuild a life free from violence. The failure to collect child support puts the single parent at a severe disadvantage in achieving economic independence.

Likewise the failure of courts to order attorney fees or divide the liquid assets immediately so that the poorer of the party can litigate the case also severely disadvantages one party, usually the wife, in seeking an equal distribution of property and in litigating custody.

Accountability

The use of PAS completely violates the principle of accountability. Rather than looking at whether the allegation of abuse is valid, attention is shifted to blaming the person who made the allegation.

Chapter 5 - Prevention and Treatment

Sec. 501 – Creation of state advisory council on domestic and family violence; purpose; required report

The Model Code recommends a state advisory council to do public awareness, education and understanding of domestic violence, facilitate communication between public and private entities, assist in developing statewide procedures, develop a comprehensive data collection plan, and promote organization of local councils.

Some of these pieces are in place in Arizona but very haphazardly. In 2000, the legislature passed a bill establishing a state plan taskforce. This taskforce was to develop a single statewide plan to ensure coordinated and efficient use of resources used to address domestic violence and sexual assault issues. The plan shall include: outcome goals, identification and prioritization of needs, identification of resources available, gaps in services and resources, methods to ensure coordination and collaboration among state agencies and between state agencies and community based organizations, efficiency and effectiveness indicators, a performance based evaluation process for current and potential services, review of the funding allocation methodology developed by the DES for the DV shelter program. However, because several task force members were not appointed until October 2000, and no funding was attached to the mandate, the task force was unable to complete its plan by the December 2000 deadline. HB 2439 in 2001 extended the deadline to December 2002. But the task force has never been funded and no substantive work has begun yet. Since the November 2000 meeting, there has only been one other in November 2001.

Due to the failure of the state plan taskforce, various pieces of the work are being done by other entities. ACADV does public awareness, education, facilitates communication between public and private entities, assists in developing statewide procedures, and is working on various aspects of comprehensive data collection. The Director of Domestic Violence Services has a grant from Lodestar to work with the Maricopa county shelters to develop a database that will allow all their various reports to be generated from one entry. She is also working with a contractor on the Center for Disease Control (CDC) grant for data source assessment and analysis. Allie Bones, system advocate, is a member of the order of protection repository committee. Brandi Brown, systems advocate, keeps a comprehensive list of domestic violence related homicides. ACADV has a clipping service for statewide newspapers which we analyze bi-weekly and put into a database. Dawn Martinez is designated staff person to work with Dr. Anu Partap on a Plans for Accessing Children's Health Services (PACHS) planning grant to coordinate medical information from shelters, emergency rooms and clinics.

The Director of Systems Advocacy has drafted this public policy piece looking at gaps and needs in legislation, policy, training and implementation. Staff belongs to and/or attends many different meetings to coordinate services. Through VAWA, the Director of Domestic Violence Services is hosting four statewide technical assistance meetings to improve the level of services. Her staff is hosting four focus groups around the state with underrepresented groups to determine needs. ACADV meets monthly with the representative from the Governor's office to coordinate plans. ACADV also participates in the State Agencies Coordination Team (SACT) team meetings to

coordinate funding and worked with DES to create a funding formula for distribution of money from the domestic violence shelter fund.

Annually the Women of Color committee of ACADV has held a public awareness event and ACADV participates in many community events such as Women's Expo and Take Back the Night to do public awareness and education. Monthly we send out a press release about an issue of domestic violence. In October, ACADV coordinates the statewide events for DV Awareness Month. ACADV's training department has held over 46 trainings in fiscal 2002.

With funding from DES, the Director of Domestic Violence Services has created a best practices manual that is going out to all participants for the final changes.

The Men's Anti-Violence Network (MAN) also did a public awareness campaign with billboards, newspaper ads, and movie theatre slides.

DES is the primary funding mechanism for shelters and ACADV participates in the data gathering for their annual report. DHS also funds a safehome network and ACADV participates in doing the training and technical assistance for the safehomes. ACADV also has a monthly executive directors meeting for those shelters in Maricopa County to coordinate services. We also have a monthly legislative committee meeting along with an annual survey and three to four statewide meetings to analyze the needs of the programs in terms of legislative advocacy. Our systems department participates in many other coalitions such as Basic Needs, Protecting Arizona's Family, International Alliance, and Native American DV Coalition and many governmental decision making bodies such as the Domestic Relations Reform Subcommittee, Child Support Coordinating Committee, Family Court Task Force, Attorney General's Task Force on Child Welfare and over 20 others.

The Governor's Commission for Prevention of Family Violence has created a two-tier structure consisting of a policy board and a technical board. The technical board has subcommittees including Prevention/Early Intervention, Offender Accountability and Treatment, Crisis Intervention, and Victim/Survivor Awareness and Empowerment. However, the meetings of the subcommittee have been suspended. The technical board suggested in January 2002 that the state plan legislation be repealed because they saw it as a roadblock.

Sec. 502 – Composition and qualification of members

The Model Code suggests that a high level body appoint the members after consultation with private and public agencies to ensure that the members have demonstrated expertise and experience in providing services to victims and that many relevant disciplines are included as well as diverse racial and ethnic backgrounds.

The current law (SB 1303, 2000) requires the members of the State Plan Task Force to be: two senators from different parties appointed by the President of the Senate, two representatives from different parties appointed by the Speaker of the House, director of the office for DV prevention, representative from a coalition of DV service providers appointed by the Governor, representative from a provider of DV shelter services appointed by the President of the Senate, representative from a provider of sexual assault services appointed by the Speaker of the House, a representative from the law enforcement community appointed by the President of the Senate, a representative from a victim's rights organization appointed by the Speaker of the House, director of DES,

Administrative Offices of the Court (AOC), Department of Commerce, DHS, Department of Public Safety (DPS), Arizona Criminal Justice Commission (ACJC), the Attorney General. City prosecutors were added in 2001. While this configuration includes many different disciplines and several people with domestic violence experience and expertise, it does not speak to diverse racial and ethnic backgrounds.

Current members (June 2002) of the Domestic Violence and Sexual Assault State Plan Task Force are: Senators Hamilton (cochair), Richardson, Representatives Gray (cochair), Loredo, Mary Bergeson, Patricia Creason, Lisa Glow, Paul Harris, Jerry Landau, John Pombier, Ann Tarpy, Steve Udall, Roger Illingworth, Catherine Drezak, Mary Lou Hanley, Paul Julien, Donna Marcum, Lynn Potts, Det. Arthur Thomas, Kerry Wangberg, Bridget Recici, and Leah Myers. Only one member represents any racial or ethnic group.

Sec. 503 – Enabling statute for establishment of local councils

The Model Code suggests that local advisory councils would do basically the same thing as the state advisory council. Many counties have local Associations of Government, for example MAG (Maricopa Association of Governments), PAG (Pima County Association of Governments) and NACOG (Northern Arizona Council of Governments). MAG and PAG have developed their own regional domestic violence plans. The MAG plan is dated August 1999, has 41 recommendations covering prevention and early intervention, crisis intervention and transitional response; systems coordination and evaluation; and long-term response. MAG Domestic Violence Council continues to work on implementation at its quarterly meetings. The Director of Systems Advocacy sits on the MAG Domestic Violence Council and the systems advocates provide legislative updates at every meeting as well as at the Employers Against Domestic Violence, a part of MAG, meetings. An ACADV systems advocate attended a NACOG meeting in May 2002.

Though funding for the Coordinated Community Response Teams (CCRT) ended in 2001, some counties (Coconino, Santa Cruz, Pima) have retained their CCRTs. The local teams provide coordination and collaboration.

Sec. 504 – State Public Health Plan for reducing domestic and family violence

The Maricopa Planning Grant will result in a program design for children who witness domestic violence. The grant does not include money for implementation. A second grant for implementation is another possibility. The target population is children with moderate rather than extensive trauma as these are the children with apparently unmet needs. One of the biggest gaps Dr. Anu Partap has observed is lack of coordination among entities such as shelters, clinics, and advocacy centers. They will meet approximately every two weeks until the end of June 2002 when the results of the program design are due.

In addition, DHS has a grant from the CDC to draft an injury prevention plan by June 2002. ACADV received a subgrant for assessing data sources and writing a policy piece. The Director of Systems Advocacy from ACADV has been participating in that plan. The injury prevention plan will include domestic violence though it does not include sexual assault.

Any plan should include the economic cost of domestic violence in assessing it's cost/benefit ratio. For example, studies estimate that domestic violence results in hundreds of millions of dollars in health care costs in the U.S., (The Pennsylvania Blue Shield Institute, in 1992, estimated the total cost of domestic violence in Pennsylvania to be $326.6 million (Pennsylvania Blue Shield Institute, *Social Problems and Rising Health Care Costs in Pennsylvania*, 1992). A study conducted at Rush Medical Center found that the average charge for medical services provided to abused women, children, and older people was $1,633 per person per year, amounting to an estimated national annual cost of $875.3 million. (Meyer, "The Billion Dollar Epidemic," American Medical News, 1992). A National Institute of Justice study estimated that domestic violence accounts for almost 15% of total crime costs - $67 billion per year. (Victim Cost and Consequences: A New Look, National Institute of Justice Research Report, 1996.) Another study found that American employees miss 175,000 days per year of paid work due to domestic violence, but there are substantial other indirect costs to society such as interrupted education or job training and reduced productivity as well as the exposure of children to violence in their own homes. (Family Violence Prevention Fund, *Working to End Domestic Violence: American Workplaces Respond to an Epidemic*, 1999).

Sec. 505 – Standards for Health-care Facilities, practitioner, and personnel; specialized procedures and curricula concerning domestic and family violence

The Model Code suggests standards for health care facilities, practitioners, and personnel regarding domestic violence be developed with service providers and stakeholders.

The Arizona Department of Health Services with the University of Arizona Health College of Medicine produced "The Arizona Emergency Department Training on Domestic Violence Protocols: Six-month Follow-up and Update" in June 1998. At that time, protocols were in place or being implemented in the VA Hospital, Claypool, Flagstaff, Ft. Defiance, Fedonia, Sacaton, Maricopa Integrated Health Systems, Mesa, Navapache, Northern Cochise, Yuma. Protocols were not in place yet in Columbia Paradise Valley Hospital, Page, San Carlos.

Joint Accreditation Commission for Hospital Organizations (JACHO) hospitals are required to use a universal screening tool, which was implemented in 1998. Anecdotal reports are that many hospitals are still not using the screening tool.

One salient issue is mandatory reporting. Arizona has a mandatory reporting statute for criminal activity, but not explicitly for domestic violence. Indian Health Service does not have such a requirement. ARS 13-3806 states: A physician, surgeon, nurse or hospital attendant called upon to treat any person for gunshot wounds, knife wounds or other material injury which may have resulted from a fight, brawl, robbery or other illegal or unlawful act, shall immediately notify the chief of police or the city marshal …or the nearest police officer, of the circumstances, together with the name and description of the patient, the character of the wound and other facts which may be of assistance to the police authorities …" There is no definition of "material injury" The legal responsibilities of reporting conflict with the legal and ethical responsibilities of patient confidentiality, informed consent, and autonomy. If the program is receiving funds through certain federal programs, federal laws could apply which prohibit reporting without the consent of the victim. On the other hand, advocates urge hospital staff to

fully document injuries on the medical record and to accurately report the victim's statements for potential use in later litigation in criminal, domestic relations, or juvenile court.

In Benton v. Superior Court, 182 Ariz. 466, 897 P. 2d 1352 (1994), the victim refused to consent to release of medical records of her treatment after an assault against her by the father of her child. She argued that both the Victims Bill of Rights and the physican-patient privilege prohibit release of her medical records without her consent. The court ruled that the public's interest in protecting victims outweighed both privacy interests.

There is no agreement on whether mandatory reporting is good public policy. A study, (Mandatory Reporting of Domestic Violence Injuries to the Police: What do Emergency Department Patients Think?", Rodriquez, McLoughlin, Nah, Campbell, JAMA Aug 1, 2001, Vol 286, No. 5) found that "Of abused women, 55.7% supported mandatory reporting and 44.3% opposed mandatory reporting (7.9% preferred that physicians never report abuse to police and 36.4% preferred physicians report only with patient consent). Among nonabused women, 70.7% (n=728) supported mandatory reporting and 29.3% opposed mandatory reporting". Non-English speakers and those who had experienced physical or sexual abuse within the last year had higher odds of opposing mandatory reporting.

Those in the field believe that mandatory reporting should not be required until there is a way to ensure victim safety. Barring that, reporting may put the victim in more danger or even create a lethal situation. Research indicates that most mental health and health care professionals do an extremely poor job of predicting lethal incidents when working with battered women. In one study where psychologists were asked to review case records and predict which ones were most likely to be lethal, they predicted lethal incidents in only 5% of the cases where the battered woman had already been murdered. (Therapists' perceptions of severity in cases of family violence. Hansen, Marsali; Harway, Michele; Cervantes, Nancyann, Violence & Victims. 1991 Fal Vol 6(3) 225-235.)

Offering the victim information about domestic violence or sexual assault and appropriate referrals is urged for all health care providers. However, it must be done in a safe manner. The PACHS planning grant mentioned earlier is a collaboration to create uniform health care reporting and documentation of domestic violence. This area of medical mandatory reporting needs closer attention and a collaboration to meet the legal, ethical and safety issues of all concerned. The PACHS planning grant could be a place to start.

Senator Paul Wellstone has introduced a bill, S 11, into Congress to provide coverage for domestic violence screening and treatment, improve the response of health care systems to domestic violence, and train health care providers within the maternal and child health block grant program and federally qualified health centers regarding screening, identification, and treatment for families experiencing domestic violence. The bill would appropriate grants for demonstration projects to:

- provide domestic violence screening and services to women and adolescent individuals in intimate or dating relationships in order to strengthen the response of State and local health care systems to domestic violence by building the

capacity of health care professionals and staff to identify, address, and prevent domestic violence

- to design and implement comprehensive statewide strategies to improve the response of the health care system to domestic violence in clinical and public health care settings
- to promote education and awareness about domestic violence at a statewide level.

Sec. 506 – Notice of rights of victims and remedies and services available; required information

The Model Code requires that the state health agency make available to health facilities a notice of victim rights, remedies and services. Currently in Arizona, this is often done voluntarily by health care practitioners, but is not mandatory.

Sec. 507 – Hospitals required to provide certain information to parents

The Model Code mandates that hospitals provide information about domestic violence to patients. The JACHO requirements mandate domestic violence screening but implementation is spotty. Some hospitals provide the information voluntarily.

Sec. 508 – Regulation of programs of intervention for perpetrators; required provisions; duties of providers

The Model Code requires that a state agency promulgate rules about batterers intervention programs. DHS has done that. The rules can be found at:
http://www.hs.state.az.us/als/codes/index.htm
http://comnet.org/bisc/standards.html

The Model Code requires that the regulation include required education and qualifications of providers of intervention. The Arizona requirements follow:

R9-20-101. Definitions
The following definitions apply in this Chapter unless otherwise specified:
13. "Behavioral health medical practitioner" means an individual licensed and authorized by law to use and prescribe medication and devices, as defined in A.R.S. § 32-1901, and who is one of the following with at least one year of fulltime behavioral health work experience:
a. A physician;
b. A physician assistant; or
c. A nurse practitioner.
14. "Behavioral health paraprofessional" means an individual who meets the applicable requirements in R9-20-204 and has:
a. An associate's degree,
b. A high school diploma, or
c. A high school equivalency diploma.
15. "Behavioral health professional" means an individual who meets the applicable requirements in R9-20-204 and is a:
a. Psychiatrist,
b. Behavioral health medical practitioner,

c. Psychologist,
d. Social worker,
e. Counselor,
f. Marriage and family therapist,
g. Substance abuse counselor, or
h. Registered nurse with at least one year of full-time behavioral health work experience.
16. "Behavioral health service" means the assessment, diagnosis, or treatment of an individual's behavioral health issue.
17. "Behavioral health technician" means an individual who meets the applicable requirements in R9-20-204 and:
a. Has a master's degree or bachelor's degree in a field related to behavioral health;
b. Is a registered nurse;
c. Is a physician assistant who is not working as a medical practitioner;
d. Has a bachelor's degree and at least one year of full-time behavioral health work experience;
e. Has an associate's degree and at least two years of full-time behavioral health work experience;
f. Has a high school diploma or high school equivalency diploma and a combination of education in a field related to behavioral health and fulltime behavioral health work experience totaling at least two years;
g. Is licensed as a practical nurse, according to A.R.S. Title 32, Chapter 15, with at least three years of full-time behavioral health work experience; or
h. Has a high school diploma or high school equivalency diploma and at least four years of full-time behavioral health work experience.
18. "Behavioral health work experience" means providing behavioral health services:
a. In an agency;
b. To an individual; or
c. In a field related to behavioral health.

23. "Clinical director" means an individual designated by the licensee according to R9-20-201(A)(6).
24. "Clinical supervision" means review of skills and knowledge and guidance in improving or developing skills and knowledge.
30. "Counselor" means:
a. An individual who is certified as an associate counselor or a professional counselor according to A.R.S. Title 32, Chapter 33, Article 6;
b. Until October 3, 2003, an individual who is certified by the National Board of Certified Counselors; or
c. An individual who is licensed or certified to provide counseling by a government entity in another state if the individual:
i. Has documentation of submission of an application for certification as a professional counselor or associate counselor

according to A.R.S. Title 32, Chapter 33, Article 6; and
ii. Is certified as a professional counselor or associate counselor according to A.R.S. Title 32, Chapter 33, Article 6 within two years after submitting the application.
84. Marriage and family therapist" means:
a. An individual who is certified as a marriage and family therapist or associate marriage and family therapist according to A.R.S. Title 32, Chapter 33, Article 7;
b. Until October 3, 2003, an individual who is a clinical member of the American Association of Marriage and Family Therapy; or
c. An individual who is licensed or certified to provide marriage and family therapy by a government entity in another state if the individual:
i. Has documentation of submission of an application for certification as a marriage and family therapist or associate marriage and family therapist according to A.R.S. Title 32, Chapter 33, Article 7; and
ii. Is certified as a marriage and family therapist or associate marriage and family therapist according to A.R.S. Title 32, Chapter 33, Article 7 within two years after submitting the application.

87. "Medical practitioner" means a:
a. Physician;
b. Physician assistant;
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c. Nurse practitioner; or
d. Other individual licensed and authorized by law to use and prescribe medication and devices, as defined in A.R.S. § 32-1901.

100. "Nurse" means an individual licensed as a registered nurse or a practical nurse
according to A.R.S. Title 32, Chapter 15.
101. "Nurse practitioner" means an individual certified as a registered nurse practitioner according to A.R.S. Title 32, Chapter 15.

118. "Physician" means an individual licensed according to A.R.S. Title 32, Chapter 13 or 17.
119. "Physician assistant" means an individual licensed according to A.R.S. Title 32, 12 Chapter 25.

126. "Psychiatrist" has the same meaning as in A.R.S. § 36-501.
127. "Psychologist" means an individual licensed according to A.R.S. Title 32, Chapter
19.1.
130. "Registered nurse" means an individual licensed as a graduate nurse, professional

nurse, or registered nurse according to A.R.S. Title 32, Chapter 15
143. "Social worker" means:
a. An individual who is certified as a baccalaureate social worker, master social worker, or independent social worker, according to A.R.S. Title 32, Chapter 33, Article 5;
b. Until October 3, 2003, an individual who is certified by the National Association of Social Workers; or
c. An individual who is licensed or certified to practice social work by a government entity in another state if the individual:
i. Has documentation of submission of an application for certification as a baccalaureate social worker, master social worker, or independent social worker according to A.R.S. Title 32, Chapter 33, Article 5; and
ii. Is certified as a baccalaureate social worker, master social worker, or independent social worker according to A.R.S. Title 32, Chapter 14
33, Article 5 within two years after submitting the application.
144. "Staff member" means an individual who is employed by or under contract with a
licensee to provide behavioral health services to an agency client and who is a:
a. Behavioral health professional,
b. Behavioral health technician, or
c. Behavioral health paraprofessional.

None of the Arizona requirements include knowledge or experience in domestic violence. This is a serious gap in the definition. However, the following article could be used to mandate that persons delivering batterer intervention programs do have appropriate education, training, and skills.

ARTICLE 2. UNIVERSAL RULES
R9-20-201. Administration
b. Establish a process for determining whether a staff member has the qualifications, training, experience, and skills and knowledge necessary to provide the behavioral health services that the agency is authorized to provide and to meet the treatment needs of the populations served by the agency;

Some provisions have already been made:

R9-20-204. Staff Member and Employee Qualifications and Records
B. A licensee shall ensure that a behavioral health professional has the skills and knowledge necessary to:
1. Provide the behavioral health services that the agency is authorized to provide; and
2. Meet the unique needs of the client populations served by the agency, such as children, adults age 65 or older, individuals with a substance abuse problem,

individuals who are seriously mentally ill, individuals who have co-occurring disorders, or individuals who may be victims or perpetrators of domestic violence. (emphasis added)

The proof that the staff member has the skills is found in the following regulation:

G. A licensee shall ensure that verification of each of the skills and knowledge required in 40 subsection (F) are documented, including the:
1. Name of the staff member;
2. Date skills and knowledge were verified;
3. Method of verification used, according to subsection (F)(2)(c); and
4. Signature and professional credential or job title of the individual who verified the staff member's skills and knowledge.

Documentation in the personnel file is required by this standard:

I. A licensee shall ensure that a personnel record is maintained for each staff member that contains:

b. The staff member's compliance with the behavioral health work experience requirements in this Section;

e. The verification of the staff member's skills and knowledge required in subsection (G), if applicable, and as otherwise required in this Chapter;
h. The staff member's completion of the training required in R9-20-206(B), if applicable;

R9-20-207. Staffing Requirements
A. A licensee shall ensure that an agency has staff members and employees to:
1. Meet the requirements in this Chapter;

The Model Code requires that the standards must include a focus on stopping violence and ensuring safety, batterer accountability, and recognition that substance abuse is a different problem with specialized treatment. Arizona does have a separate licensing section for alcohol treatment programs. The following definitions describe the programmatic standards in Arizona:

29. "Counseling" means the therapeutic interaction between a client, clients, or a client's family and a behavioral health professional or behavioral health technician intended to improve, eliminate, or manage one or more of a client's behavioral health issues and includes:
a. Individual counseling provided to a client;
b. Group counseling provided to more than one client or more than one family; or
c. Family counseling provided to a client or the client's family.

33. "Court-ordered evaluation" or "evaluation" has the same meaning as "evaluation" in A.R.S. § 36-501.
34. "Court-ordered treatment" means treatment provided according to A.R.S. Title 36, Chapter 5.

97. "Misdemeanor domestic violence offender treatment program" means a behavioral health service provided to an individual convicted of a misdemeanor domestic violence offense and ordered by a court to complete domestic violence offender treatment according to A.R.S. § 13-3601.01.

124. "Professionally recognized treatment" means a behavioral health service that is:
a. Supported by research results published in a nationally recognized journal, such as the Journal of the American Psychiatric Association, the Journal of the American Medical Association, or the Journal of Psychiatric Rehabilitation; or
b. A generally accepted practice as determined by a Department approved psychiatrist or psychologist.

151. "Treatment" means:
a. A professionally recognized treatment that is provided to a client or the client's family to improve, eliminate, or manage the client's behavioral health issue; or
b. For court-ordered alcohol treatment, the same as in A.R.S. § 36-2021.
152. "Treatment goal" means the desired result or outcome of treatment.
153. "Treatment method" means the specific approach used to achieve a treatment
goal.
154. "Treatment plan" means a description of the specific behavioral health services
that an agency will provide to a client that is documented in the client record.

ARTICLE 3. OUTPATIENT CLINIC REQUIREMENTS
R9-20-302. Supplemental Requirements for Counseling
A. A licensee shall ensure that counseling is:
1. Offered as described in the agency's program description in R9-20-201(A)(2)(d);
2. Provided according to the frequency and number of hours identified in the client's treatment plan;
3. Provided by a behavioral health professional or a behavioral health technician;
and
4. If group counseling, limited to no more than 15 clients or, if family members participate in group counseling, no more than a total of 20 individuals, including all clients and family members.

B. A licensee shall ensure that a staff member providing counseling that addresses a specific type of behavioral health issue, such as substance abuse or crisis situations, has skills and knowledge in providing the counseling that addresses the specific type of behavioral health issue that are verified according to R9-20-204(F)(2) and documented according to R9-20-204(G)(1) through (4).

No Arizona standard complies with the Model Code requiring focus and recognition of specific domestic violence issues.

The Model Code also requires that certain releases shall be signed for information and victim safety, and reports to the court shall be mandatory. Arizona's rules regarding this are as follows:

ARTICLE 2. UNIVERSAL RULES
R9-20-201. Administration

n. Establish the process for warning an identified or identifiable individual, as described in A.R.S. § 36-517.02(B) through (C), if a client communicates to a staff member a threat of imminent serious physical harm or death to the individual and the client has the apparent intent and ability to carry out the threat; and

A proper warning system for victim safety could be devised under the authority of this section of existing rules. One does not now exist.

The Model Code requires that the standard include criteria concerning a perpetrator's appropriateness for the program. Arizona's relevant admission requirements are as follows:

R9-20-208. Admission Requirements
A. A licensee may conduct a preliminary review of an individual's presenting issue and unique needs before conducting an assessment of the individual or admitting the individual into the agency. If a licensee determines, based on an individual's presenting issue and unique needs, that the individual is not appropriate to receive a behavioral health service or ancillary service at an agency, the licensee shall ensure that the individual is provided with a referral to another agency or entity. If an individual received a face-to-face preliminary review, a staff member shall provide the individual with a written referral.

C. A licensee shall ensure that:
1. An individual is admitted into an agency based upon:
a. The individual's presenting issue and treatment needs and the licensee's ability to provide behavioral health services and ancillary services consistent with those treatment needs;
b. The criteria for admission contained in the agency program description, as required in R9-20-201(A)(2)(h)(i), and the licensee's policies and procedures; and

c. According to the requirements of state and federal law and this Chapter; and
D. A licensee shall ensure that:
1. Based upon an assessment, if an individual is not appropriate to receive a behavioral health service or ancillary service according to the criteria in subsection (C), the individual is provided with a referral to another agency or entity; and
2. If an individual received a face-to-face assessment, a staff member provides the individual with a written referral.

None of the existing admission criteria speak specifically to the appropriateness of the batterer's admission.

The Model Code requires that the perpetrator sign releases for information to go to the victim, victim advocate, prior and current treating agencies, courts, parole officers, probation and CPS. Current Arizona requirements are:

R9-20-211. Client Records

2. Written permission is obtained in a language understood by the individual signing the written permission under subsection (3)(h);
3. Written permission includes:
a. The name of the agency disclosing the client record or information;
b. The purpose of the disclosure;
c. The individual, agency, or entity requesting or receiving the record or information;
d. A description of the client record or information to be released or disclosed;
e. A statement indicating permission and understanding that permission may be revoked at any time;
f. The date or condition when the permission expires;
g. The date the permission was signed; and
h. The signature of the client or the client's parent, guardian, custodian, or agent; and
4. Written permission is maintained in the client record.
5. Whether the client is receiving court-ordered evaluation or court-ordered treatment or is a DUI client or a client in a misdemeanor domestic violence offender treatment program;
6. If the client is receiving court-ordered evaluation or court-ordered treatment, a copy of the court order, pre-petition screening, and court-ordered evaluation as required by A.R.S. Title 36, Chapter 5;

14. Documentation of permission to release a client record or information, as required in subsection (A)(3)(c) and (B), if applicable;

15. Documentation of requests for client records and of the resolution of those requests;

16. Documentation of the release of the client record or information from the client record to an individual or entity as described in subsection (A)(3)(a) or (b);

The standards do not meet the Model Code requirements.

The specific section for batterer intervention programs in Arizona is:

ARTICLE 11. MISDEMEANOR DOMESTIC VIOLENCE OFFENDER TREATMENT
R9-20-1101. Misdemeanor Domestic Violence Offender Treatment Standards
A. A licensee of an agency that provides misdemeanor domestic violence offender treatment
shall ensure that:
1. The agency's program description includes, in addition to the items listed in R9- 20-201(A)(2), the agency's method for providing misdemeanor domestic violence offender treatment;
2. The agency's method for providing misdemeanor domestic violence offender treatment:
a. Is professionally recognized treatment for which supportive research results have been published within the five years before the date of application for an initial or renewal license;
b. Does not emphasize or exclusively include one or more of the following:
i. Anger or stress management,
ii. Conflict resolution,
iii. Family counseling, or
iv. Education or information about domestic violence;
c. Emphasizes personal responsibility;
d. Identifies domestic violence as a means of asserting power and control over another individual;
e. Does not require the participation of a victim of domestic violence;

The above requirements appear to meet the standards holding the batterer accountable, but do not emphasize a focus on stopping the acts of violence or safety of the victim(s).

f. Includes individual counseling, group counseling, or a combination of individual counseling and group counseling according to the requirements in R9-20-302; and
g. Does not include more than 15 clients in group counseling; and
3. Misdemeanor domestic violence offender treatment is not provided at a location where a victim of domestic violence is sheltered.
B. A licensee of an agency that provides misdemeanor domestic violence offender treatment shall ensure that, for each referring court, a policy and procedure is developed, implemented, and complied with for providing misdemeanor domestic violence offender treatment that:
1. Establishes:

a. The process for a client to begin and complete misdemeanor domestic violence offender treatment;
b. The timeline for a client to begin misdemeanor domestic violence offender treatment;
c. The timeline for a client to complete misdemeanor domestic violence offender treatment, which shall not exceed 12 months; and
d. Criteria for a client's successful completion of misdemeanor domestic violence offender treatment, including attendance, conduct, and participation requirements;
2. Requires the licensee that provides misdemeanor domestic violence offender treatment to notify a client at the time of admission of the consequences to the client, imposed by the referring court or the licensee, if the client fails to successfully complete misdemeanor domestic violence offender treatment;
3. Requires the licensee to notify the referring court in writing within a timeline established with the referring court when any of the following occur:
a. The licensee determines that a client referred by the referring court has not reported for admission to the misdemeanor domestic violence offender treatment program,
b. The licensee determines that a client referred by the referring court is ineligible or inappropriate for the agency's misdemeanor domestic violence offender treatment program,
c. A client is admitted to the agency's misdemeanor domestic violence offender treatment program,
d. A client is voluntarily or involuntarily discharged from the agency's misdemeanor domestic violence offender treatment program,
e. A client fails to comply with misdemeanor domestic violence offender treatment, or
f. A client completes misdemeanor domestic violence offender treatment;

This requirement does not meet the standard that the program shall report to the court and the victim failure to comply with the program, to attend the program, and threat of harm by the perpetrator. Anecdotal evidence is that some courts do not require reports regarding attendance at programs. Regardless, the program can make it a requirement to report to the court, probation officer, any licensing board and the victim.

C. A licensee of an agency that provides misdemeanor domestic violence offender treatment shall ensure that misdemeanor domestic violence offender treatment is provided by a staff member who:
1. Is either:
a. A behavioral health professional, or
b. A behavioral health technician with at least an associate's degree;
2. Satisfies one of the following:
a. Has at least six months of full-time work experience with domestic violence offenders or other criminal offenders, or
b. Is visually observed and directed by a staff member with at least six months of full-time work experience with domestic violence offenders or

other criminal offenders; and
3. Has completed at least 40 hours of education or training in one or more of the following areas within the four years before the date the individual begins providing misdemeanor domestic violence offender treatment:
a. Domestic violence offender treatment,
b. The dynamics and impact of domestic violence and violent relationships, or
c. Methods to determine an individual's potential to harm the individual or another.

D. A licensee of an agency that provides misdemeanor domestic violence offender treatment shall ensure that:
1. In addition to meeting the training requirements in R9-20-206(B), a staff member completes at least eight hours of training, every 12 months after the staff member's starting date of employment or contract service, in one or more of the areas listed in subsection (C)(3); and

This training and education requirement does not mandate that the provider have the necessary education and training in the dynamics and impact of domestic violence and violent behavior. This is a serious gap and such education and training should be mandatory.

E. A licensee of an agency that provides misdemeanor domestic violence offender treatment shall ensure that a staff member completes an assessment of each client that includes, in addition to the requirements of R9-20-209, the following:
1. Obtaining the case number or identification number assigned by the referring court;
2. Determining whether the client has any past or current orders for protection or nocontact orders issued by a court;
3. Obtaining the client's history of domestic violence or family disturbances, including incidents that did not result in arrest;
4. Obtaining the details of the misdemeanor domestic violence offense that led to the client's referral for misdemeanor domestic violence offender treatment; and
5. Determining the client's potential to harm the client or another.

This requirement does not meet the Model Code standard that a program determine the criteria for the perpetrator's appropriateness for the program. Such appropriateness should be determined after assessment and if inappropriate, the client should be referred back to the court. This is especially important when victims are inappropriately referred to BIP's. Group leaders should take responsibility to send the referral back to the court and tell the court that it is inappropriate to send a victim to a BIP.

G. A licensee of an agency that provides misdemeanor domestic violence offender treatment shall:
1. Provide the original of a client's certificate of completion to the referring court

according to the timeline established in the licensee's policy and procedure,
2. Provide a copy of the client's certificate of completion to the client, and
3. Maintain a copy of the client's certificate of completion in the client record.

This section requires that the agency report completion of the program, but not failure to complete the program, which should be included.

Sec. 509 – Continuing education for law enforcement officers concerning domestic and family violence; content of course

The Model Code suggests that an agency should mandate initial and continuing education for law enforcement in domestic violence, that the curriculum should be developed with providers and the coalition, and outlines the content of the curricula.

Arizona Peace Officers Standards and Training Board (AZPOST) does have a model lesson plan which was developed by Mesa Community College Justice Studies Program (revised 1999) in conjunction with AZPOST. It addresses all of the Model Code suggested topics except sensitivity to cultural, racial and sexual issues and the effect of cultural, racial and gender bias on the response of law enforcement officers and the enforcement of laws relating to domestic and family violence.

ACADV has a contract with AZPOST and does train with them. However, there is no required number of hours that law enforcement must have training in intimate violence. This is a serious problem. Very little time is devoted to the subject in the academy. Post-academy, most officers learn from older officers on the street who do not follow the protocol learned in the academy especially in relation to domestic violence. While continuing education is required if an officer wants to advance, there is no requirement for continued education in intimate violence. This lack of mandatory hours results in very uneven application of the domestic violence laws.

In addition, the issue of police domestic violence is not well dealt with in Arizona. Some individual departments recognize the problem and have appropriate programs. Others keep their heads deeply buried in the sand. Attempts since October 2001 to raise the issue among state law enforcement groups have been unsuccessful. This is another glaring gap in Arizona's policy. Arizona has a very high dual arrest rate and a high rate of arrest of women in domestic violence cases. Anecdotally, a recent report stated that of those referred to batterers treatment 14 were men and 18 were women. This is contrary to all known studies and statistics in the United States and indeed around the world. The problem of dual arrest in Tucson has long been discussed with no positive action. This constitutes part of the backlash against women for speaking up about violence in the family and is an often successful attempt to silence them.

In 2001, Tennessee passed legislation requiring law enforcement, firefighters, and emergency medical personnel receive domestic violence training. Missouri increased requirements for law enforcement, now requiring 30 hours per year.

Sec. 510 – Continuing education of judges and court personnel; content of course

The Model Code requires that judicial officers and court personnel shall be educated in domestic violence. This is another glaring training gap in Arizona. The only required training is on administration of orders of protection. There is no required training on domestic violence, safety, resources, sensitivity or lethality as required by the

code. In June 2002, Judge Mark Armstrong, Presiding Judge Family Court, stated that it is mandatory that judges have four hours of training on domestic violence every six months. The last training was February 5, 2002. The next session is September 27, 2002 in conjunction with the Supreme Court and MAN. When ACADV has offered these trainings, they have not been well attended. Occasionally a training organized by others covers these issues but the content and quality of the programs are unknown. The Maricopa County Superior Court has sponsored trainings on PAS, which seems to violate Judicial Canon 3 regarding impartiality. PAS is an evidentiary issue, which may come before the judge for a ruling. When the court sponsors a seminar on it, the court gives its imprimatur of approval on the theory, which is bound to influence the judges later decision. Since PAS is used against the mothers 90% of the time, it also violates Canon 3 prohibiting bias based on sex.

Due to an ethics ruling by the Arizona Supreme Court (Judicial Ethics Advisory Committee, Opinion 97-3, March 13, 1997) judges who do wish to become active in stopping violence are prohibited from participating in any domestic violence group because allegedly it would prejudice them in cases that come before them. Domestic violence is a crime. It is a crime just like driving under the influence, homicide, robbery. Why are judges prohibited from engaging in activities to reduce crime? How would knowing about the dynamics of a crime, i.e. domestic violence, prejudice a judge? In fact, it would make that judge less biased, not more. Judges attend trainings to learn about the dynamics of drunken driving and pedophilia, and they should be required to attend trainings to learn about domestic violence as well.

ACADV conducted a court watch project for 18 months observing the process of obtaining an order of protection. The primary findings were as follows:

- **"Overall treatment"** was measured by asking about judicial punctuality, explanations for delay, speech audibility and clarity, and the degree to which the judge appeared informed about the case. Less then 14% of judges scored above average or excellent on this rating scale. Thirty-six percent of judges scored below average or poor. Essentially almost three-quarters of judges scored average or below on this rating.

- **Petitioner and respondent treatment** measures the conduct of the judge towards the parties regarding use of language, accommodation of language or other barriers to understanding the justice system, allowing adequate time for all parties, and degree of patience, respect, and order maintained in the courtroom. Judicial scores in this area were a little better. Twenty-four percent of petitioners were treated above average or better while 21% treated them below average or poorly. Twenty-one percent of respondents were treated well, and less then 20% were treated poorly. Overall, over 50% of both petitioners and respondents were given merely average or below average treatment from the judge.

- In all three measures, the largest percent of cases indicate that judicial performance appeared simply to be "average".

In 75% of the cases, safety measures were followed but in 25% they were not or were unrecorded. In 56% of the cases, questions were never asked about domestic violence though these were hearing on orders of protection. The Courtwatch is continuing and has expanded to domestic relations cases in Superior Court.

ACADV receives a large number of complaints about the judicial system and its failure to protect victims of violence in criminal, family and juvenile courts. At the Domestic Relations Reform Subcommittee, a legislatively mandated committee, at least two and as many as seven women appear every month to testify about the inequities and dangerous practices of the courts. At a public hearing on judges March 20, 2002, 13 of 15 people who testified talked about the refusal of domestic relations judges to take allegations of abuse seriously and prohibit custody by abusers. Many complaints have been made to the Arizona Commission on Judicial Conduct but, like most self-policing entities, few results are seen. To document this problem, ACADV is replicating the Battered Mother's Testimony Project designed at Wellesley College in MA.

The Harvard School of Public Health released a study April 17, 2002 that of all industrialized countries, American females are at the highest risk for murder. From 1991-1998, Arizona white females had the sixth highest rate of intimate murder in the U.S. Given these facts, it is unconscionable for judges to be ignoring the lethality of domestic violence in custody, dependency and criminal cases.

Sec. 511 – Continuing education for state, county, and city employees who work with domestic and family violence cases and are required to report abuse and neglect of children

The Model Code recommends that all those who work with victims or who are mandatory reporters of child abuse have continuing education courses on family violence which are prepared in conjunction with service providers and the state coalition. Those included are probation officers, CPS workers, psychologists, social workers, court appointed special advocates, mediators and custody-evaluators.

Studies in this area leave no doubt that such training is needed. One study (Factors that influence clinicians' assessment and management of family violence, Tilden, Schmidt, Limandri, American Journal of Public Health v. 84 April 1994, p. 628-33) found that a third of dentists/dental hygienists, nurses/physicians, and psychologists/social workers reported having no education content on child, spouse or elder abuse in their training. Those with such training were more likely to suspect abuse but significant numbers did not view themselves as responsible for dealing with problems of family violence. There was low confidence in and low compliance with mandatory reporting laws, including child and elder abuse laws.

Inpatient identification of domestic violence was not much better. Non-white populations were twice as likely to be identified as victims of domestic violence and as age increases, identification decreases. (Identifying domestic violence within inpatient hospital admissions using medical records, Rudman, Davey-Debrynda, Women and Health v. 30 No. 4, 2000, p 1-13).

A study compared education of psychologists and marriage and family therapists to quality of intervention in domestic violence cases. (The relationship between formal education/training and the ability of psychologists and marriage and family therapists to assess and intervene when counseling with female victims of domestic violence,

Williamson, Dissertation, Abstracts, International Section A: Humanities and Social Sciences, 2000, Oct; vol 6l(4-A); 1311.) The study found problems in recognizing lethality and in formulating appropriate interventions regarding safety. Many therapists still put victims and perpetrators into couples counseling. Supervised training in domestic violence cases was extremely important. Other facts leading to better results was having a Masters Degree rather than a PhD, having recently been licensed, having done reading or seminars in domestic violence, or specializing in violence against women.

In 1999, a study found that only 56% of licensed mental health professionals had received training on sexual assault, only 59% on domestic violence, only 36% on sexual harassment and 78% on child sexual abuse. (Training mental health professionals on violence against women, Campbell, Raja, Grining, Journal of Interpersonal Violence, 1999 Oct, Vol. 14 (10), 1003-1013, Sage Publications Inc., 1999.)

The absence of appropriate education, training and experience for mental health professionals regarding domestic violence is another glaring gap in Arizona policy and training. ACADV recently signed a contract with Department of Economic Security to provide training to CPS workers and began such training in March 2002.

The legal committee of ACADV has requested that the court, which keeps a list of "qualified" psychologists, CASAs, mediators, and custody-evaluators, at least state which of those have experience or education in family violence. The court has deferred the issue until the fall of 2002. The Maricopa County Conciliation Court personnel have had training in domestic violence, some provided by ACADV, but not a continuing course nor one developed with service providers or the coalition. Other personnel, e.g. probation officers, have also had training by ACADV but only on a one-time or irregular basis.

Texas enacted a law requiring at least four hours of domestic violence training for all those who work in welfare agencies. Currently states that require training in domestic violence for professionals include Arkansas, Colorado, Florida, Idaho, Missouri, Tennessee, Texas, and Virginia.

Sec. 512 – Continuing education for attorneys

The Model Code requires that the state bar or state agency shall provide continuing legal education for attorneys in domestic violence.

The state bar does mandate 15 hours annually of continuing legal education, but there is no requirement that there be any education about domestic violence. Even those who qualify for family law specialization do not have to have any education in family violence. ACADV is attempting to work with the advisory committee for family law specialization to mandate inclusion of domestic violence in training and testing prior to becoming a certified family law practitioner. Previously, ACADV tried to have a class at Arizona State University (ASU) law school on family violence. Though 18 students signed up, the school cancelled the course. In April 2002, ACADV again inquired about a course at ASU law school and was told that there was not enough material to make a law school class. More than anything, this answer indicates the lack of understanding of the impact of domestic violence on every facet of our legal system. In fact, dozens of law schools across the country do have domestic violence classes or specialized domestic violence clinics including the University of Arizona in Tucson. The American Bar

Association released a book entitled, "When will they ever learn" encouraging the integration of domestic violence material into every law school class. At least three law school text books exist on domestic violence. The failure of legal education on this issue is another glaring gap in Arizona policy and training.

Sec. 513 – Required curricula for state, county, and city education system

The Model Code mandates curricula for students, counselors, health-care personnel, administrators and teachers.

In June 2001, Janet Napolitano, Attorney General, issued Recommendations from Model Court Stakeholder and Stewardship Advisory Committee and Workgroups and Attorney General's Model Court Implementation Plan: 2001 and Beyond. One aspect of the plan addresses education issues and encourages CPS and schools to work more closely together and to have training on dependency and abuse issues. The recommendation is that all employees who have contact with students should receive training on how behavioral health and substance abuse issues in the family affect children. This would include domestic violence.

ACADV, Peer Solutions Inc. and other groups conduct education on these issues in schools. Private foundations fund various school-based programs on violence, though often they deal with violence in the school only and do not talk about violence in the home. This seems shortsighted as violence in the school is often caused by violence in the home. Positive Force Players, a teen group at Planned Parenthood, often deal with issues of violence in the lives of teens. But it is not mandated. This is a glaring gap in Arizona policy and practice as prevention is much more effective than intervention after the fact.

Sec. 514 – Continuing education for school personnel who are required to report abuse and neglect of children

The Model Code mandates curricula for mandatory reporters of child abuse. See 513.

Recommendations

The failure of the statewide plan impacts all the Model Code recommendations especially in this chapter on Prevention and Treatment. ACADV and other agencies, both private and governmental, are working on various parts of the plan. Health planning is being done by DHS for the CDC injury prevention plan. Dr. Anu Partap's grant focuses on coordination among family advocacy centers, child abuse agencies, and the medical community. Hospital protocols remain an issue to be addressed. It is vital that the various agencies collaborate and coordinate so as to maximize resources. Local domestic violence councils also need to be developed in every county and city.

The lack of education and training in all systems – law enforcement, judicial, medical, educational, "helping" professions, clergy etc. – is very weak in Arizona. It also impacts all of the five principle areas.

Prevention

A close correlation has been established between domestic violence and suicide. In the U.S., as many as 35-40% of battered women attempt suicide. Thus, it is vital that those staffing suicide crisis lines and community information and referral agencies are trained to recognize domestic violence calls and to appropriately intervene.

Protection

A discussion needs to occur between victim-survivors, victim advocates, and the medical community regarding the issue of mandatory reporting.

Accountability

The current licensing and performance of BIP's does not meet the Model Code recommendations. While funders are very keen to evaluate shelter programs and hold victims accountable for solving a problem not of their making, funders do not demand outcome-based measures for BIPs in order to continue funding. Once again, the focus is on changing the behavior of the victim; not changing the behavior of the perpetrator. If outcome-based measures were used on BIPs, many might not be able to justify their continued receipt of tax payer dollars.

Accountability is not only for perpetrators. Systems need accountability too. The current systems are not, by and large, transparent. The Board of Psychological Examiners, where many complaints are lodged regarding custody evaluators, does have open hearings. Most police departments complaint systems, the State Bar, and the Arizona Commission on Judicial Conduct do not have transparent systems. Victims who file complaints about treatment within all of these systems are often dissatisfied with the result. Public oversight is vital in every system.

Likewise the election of judges is a major concern. Voters rarely have much, if any, information on a particular judge. The lawyers who participate in the rating system in merit selection counties (Maricopa and Pima) state they are afraid to give any ranking but the highest. Citizens who are asked are often unaware of judicial procedures and judicial canons so they cannot fairly rank the judicial officers. ACADV's Courtwatch program will be putting judicial information on its website, but widespread information for an informed electorate does not exist.

Chapter 6 - Confidentiality

Shelter Records

A tangled web of state, federal and tribal laws and regulations influence the safety of victims of violence. A comprehensive look at confidentiality provisions is necessary to adequately protect victims of violence.

Arizona has a marital privilege law (ARS 12-2231) but it does not apply in divorce, a criminal action or alienation of affection.

Consultation between a crime victim advocate and a victim is confidential (ARS 13-4430) but it only comes into effect when the perpetrator has been arrested or a charge filed. (ARS 13-4402). Very few perpetrators of violence against intimates are arrested or charged in Arizona.

Medical records are privileged and confidential (ARS 12-2292) but that cannot be used to prevent a criminal prosecution. (*Benton v. Superior Court of Arizona in and for County of Navajo*, 182 Ariz. 466, 470, 897 P.2d 1352, 1356 (Ariz.App. Div. 1 1994).

The location of shelters is confidential. (ARS 36-3009)

A certified behavioral health professional has confidentiality. (ARS 32-3283) However, many of the staff who work in shelters and as service providers do not and cannot qualify to be certified behavioral health professionals, nor is it appropriate that they should.

A mental health service provider has a duty to warn of future criminal conduct ARS 36-517.02. This provision seems to be honored more in the breach as threatened violent acts by perpetrators are rarely conveyed to victims. More likely, in juvenile and domestic relations court, the victim is told to meet with the perpetrator in spite of his threatened violent acts.

The federal government also has a host of laws and regulations regarding confidentiality depending on the stream of funding a particular service provider is receiving. (See Confidentiality for Domestic Violence Service Providers in Arizona Under Federal and State Law, June 2001) Some of the laws make the records immune and some require an *in camera* proceeding with a four-part test before release.

Administrative regulations also apply to confidentiality of records. Department of Health Services (DHS) has incorporated the federal regulations 42 CFR 2.l et seq into their requirements. That means the records can only be disclosed after an *in camera* hearing where the need passes a four-part test.

This issue has been litigated in Arizona (See Confidentiality for Domestic Violence Service Providers in Arizona Under Federal and State Law, p. 23) and federally (see pages 24-25).

Because of this confusing tableux of laws and regulations, service providers have repeatedly attempted to pass state legislation that would be uniform and understandable. Each attempt has failed primarily because county prosecutors oppose it though studies in other states have shown clearly that having such a confidentiality statute increases successful prosecution because the victim feels safer. Since it increases successful prosecution, the continued resistance of county prosecutors is bewildering.

Further, law enforcement has not been adequately trained in confidentiality provisions. Very dangerous situations have arisen in Arizona with law enforcement threatening shelter workers and service providers, surrounding shelters, and in one

instance, almost precipitating an armed response. The stand-off at the Pine Ridge Reservation between the shelter workers and the FBI made national news. The workers, who shredded the sought after documents, were arrested but later released because under federal law, they were vindicated.

Voter Registration

A second area of concern regarding confidentiality is voter registration, ARS 16-153. Victims of domestic violence or persons who are protected under an order of protection or injunction against harassment may request that the general public be prohibited from accessing the residential address, telephone number and voting precinct number contained in their voter registration record. However, the clerk has 120 days to seal the record. This does not offer much safety to victims. Further, in the 2002 legislative session, attempts were made to remove the language "victims of domestic violence" claiming it was duplicative of "persons who are protected under an order of protection". The Domestic Violence Shelter Services in Arizona Statewide Summary, July 1, 2000-June 30, 2001 shows that of 22,162 women and children who sought shelter, only 1,149 or 5% of the victims had obtained an order of protection. Thus to restrict the address protection to only those with orders of protection is to do not only a great disservice to victims, but to violate their constitutional right to vote as well.

Drivers License

A third area of concern is drivers and car license records, which are public records (ARS 28-447). Certain restrictions apply to the release of the information (ARS 28-450). Information from a vehicle title or registration shall not be released unless the requester provides the name of the owner, the vehicle identification number, and the vehicle license plate number. Information from a driving record shall not be released unless the person provides the name of the licensee or the name of the person whose record is requested, the driver's license number, and the date of birth or expiration of the driver's license. Obviously a former spouse or partner could provide this information, which could endanger the victim. A person is required to update their records if the name or address changes (ARS 28-448) making it difficult for women to relocate and stay safe. However, on the request of an applicant, the Division of Motor Vehicles (DMV) shall allow the applicant to provide a post office box for an address rather than a street address (ARS 28-3166). The applicant does have to provide the social security number to the DMV, but they do not and should not use it on the license itself. (ARS 28-3158(F)).

Under the federal Driver Privacy Protection Act, Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, s. 30003, 108 Stat. 1796, 18 U.S.C. 2721-2725 (1994) states are prohibited from releasing individuals photographs, social security number, driver identification number, name, address, telephone number, and medical or disability information. States were given three years to implement these changes, which Arizona has not yet done. However, a state is deemed in compliance if it enacts a procedure which implements the changes only as individuals renew their licenses, titles, registrations, or identification cards. It appears Arizona is out of compliance with this provision as well.

State Address Confidentiality Program

Washington has enacted a state address registration program to protect victims. Wash.Rev.Code s. 42.17.310, 42.17.311, 29.01.155, 26.04. Victims who have permanently left an abusive situation can register with the Secretary of State's office. The office gives the registration a small, wallet-size , picture identification card that informs those seeing it that the holder is registered for the program for four years. Thereafter, the holder need not give the actual address but may use any substitute mailing address (PO box or address of someone else) located within the state. In addition, the Secretary of State's office will accept legal process for the victim. The law covers voting, marriage licenses, public assistance, drivers and car license, school registration, library card, and state college.

Florida has enacted a law that allows crime victims to request that any state agency not reveal home or work addresses or telephone numbers for five years (Fla. Stat.Ann s. 119.07).

Currently, 13 states have address confidentiality programs (CT, IL, IN, ME, MI, NV, NJ, NC, NJ, NM, VT, WA, FL)

The Washington program has been proposed to Arizona's Secretary of State. ACADV did the research regarding potential numbers and cost. The Secretary of State has not implemented the program due to cost considerations, which are quite minimal.

Court Records

Public access to court records has become another national issue impacting victim's safety. As more and more legal records go on line, especially when they are searchable, it puts the victim's safety at risk. The following is part of a draft model policy on public access to court records with a discussion of the problems.

DRAFT FOR COMMENT
MODEL POLICY ON PUBLIC ACCESS TO COURT RECORDS

Draft dated February 22, 2002
Prepared on behalf of the Conference of Chief Justices and
the Conference of State Court Administrators
by "Model Policy on Public Access to Court Records Comment Page" at
http://www.courtaccess.org/modelpolicy
Comments to modelpolicy@ncsc.dni.us by 4/15/2002

INTRODUCTION

Historically court files have been open to anyone willing to come down to the courthouse and examine the files. The reason that court files are open is to allow the public to observe and monitor the judiciary and the cases it hears, to find out the status of parties to cases, for example dissolution of marriage, or to find out final judgments in cases. Technological innovations have resulted in more court records being available in electronic form and have allowed easier and wider access to the records that have always been available in the courthouse. Information in court records can now be "broadcast" by being made available

through the Internet. Information in electronic records can be easily compiled in new ways. An entire database can be copied and distributed to others. At the same time, not all courts have the same resources or the same level of technology, resulting in varying levels of access to records across courts in the same state. These new circumstances require new access policies to address the concern that the proper balance is maintained between public access, personal privacy, and public safety, while maintaining the integrity of the judicial process. In order to provide guidance to state judiciaries and local courts in this area, and to provide consistency of access across a state, a model policy on access to court records has been developed.

Attempts are underway to develop a national registry of protective orders to assist law enforcement, day care providers, etc., in protecting spouses and children who are the subject of protective orders.

While the registry can be useful for full faith and credit purposes, it can also be very dangerous in that a perpetrator can search the database and find out where his victim has relocated. Thus a victim who has relocated for safety will be foreclosed from obtaining an order of protection because she might be located that way. But if she doesn't obtain one, should he locate her and show up at her door, the police will be loath to take action because she has no order. Thus she is put into a Catch 22 situation.

Section 4.30 –COURT RECORDS EXCLUDED FROM PUBLIC ACCESS

The following information in a court record is not accessible to the public:
(a) Information that is not to be accessible to the public pursuant to federal law;
(b) Information that is not to be accessible to the public pursuant to state law; Thus it is even more important to pass a state confidentiality statute which would include orders of protection.
(c) Financial information that provides identifying account numbers on specific assets, liabilities, accounts, credit cards, first five digits of social security number, or P.I.N. numbers of individuals or business entities;
(d) Proprietary business information such as trade secrets, customer lists, financial information, or business tax returns;
(e) Information reviewed in camera and made confidential by a court order;
(f) Information in the court record relating to a proceeding to which the public does not have access pursuant to law or a court order;
(g) Notes, drafts and work products prepared by a judge or for a judge by court staff or individuals working for the judge related to cases before the court;
(h) Notes, drafts and work products related to court administration and clerk of court information defined in section 3.10 (a) (3);
(i) Personnel and medical records of court employees, information related to pending internal investigations of court personnel or court activities, applicants for positions in the court, information about pending litigation where the court is a party, work product of any attorney or law clerk

employed by or representing the judicial branch that is produced in the regular course of business or representation of the judicial branch, court security plans and procedures, cabling and network diagrams and security information related to the court's information technology capabilities, and software used by the court to maintain court records, whether purchased, leased, licensed or developed by or for the court; and
(j) Information constituting trade secrets, copyrighted or patented material or which is otherwise owned by the state or local government and whose release would infringe on the government's proprietary interests.
A member of the public may request the court to allow access to information excluded under this provision as provided for in section 4.60 (b).

The focus here is more on protecting the court and business information than in protecting the victim of violence.

Examples of information in individual cases that are not open to the public pursuant to some existing state laws include:

- *Name, address or telephone number of a victim, particularly in a sexual assault case or domestic violence case*;

Since Arizona has no law protecting this information, it would become public. Again, this is why the passage of a confidentiality law is important.

- *Name, address or telephone number of witnesses in criminal cases;*
- *Name, address or telephone number of informants in criminal cases;*
- *Names, addresses or telephone numbers of potential or sworn jurors in a criminal case;*
- *Juror questionnaires and transcripts of voir dire of prospective jurors;*
- *Wills deposited with the court for safekeeping;*
- *Medical or mental health records, including examination, diagnosis, evaluation, or treatment records;*
- *Psychological evaluations of a party, for example regarding competency to stand trial;*
- *Child custody evaluations in family law or juvenile dependency (abuse and neglect) actions;*
- *Description or analysis of a person's DNA or genetic material, or biometric identifiers;*
- *State income or business tax returns;*
- *Proprietary business information such as trade secrets, customer lists, financial information, business tax returns, etc.;*
- *Grand Jury proceedings (at least until the indictment is presented and the defendant is arrested);*
- *Presentence investigation reports;*
- *Search warrants (at least prior to the return on the warrant); and*
- *Arrest warrants (at least prior to the arrest of the person named).*

Additional categories of information that a state or court might also consider excluding from general public access include:

- *Names and address of children in a juvenile dependency proceeding;*
- *Names and addresses of children in a dissolution, guardianship, domestic violence, harassment, or protective order proceeding*;

If these two items are not kept confidential, it will lead the perpetrator directly to the victim.

- *Addresses of litigants in cases;*

Likewise, if the victim decides to sue the perpetrator in a civil case, her address needs to be confidential.

- *Photographs depicting violence, death, or children subjected to abuse;*
- *Exhibits in trials;*
- *Applications and supporting documents that contain financial information filed as part of a request to waive court fees or to obtain appointment of counsel at public expense;*

While this policy is easy to state, it is probably the area that is the most difficult to implement. Existing court records already contain large amounts of detailed financial information, particularly in family law and probate proceedings. Court forms often require this information, although it is not clear that the court always needs the details to make its decisions. Many parties, particularly those without legal representation, are not aware that this information may be accessible to the general public. There is also the problem of a party intentionally including this type of information in a document filed with the court, effectively misusing the court process. A state or court considering adoption of an access policy should review its forms and the information parties are required to provide to minimize the gathering of information to which public access ought not generally be provided. Alternatively the parties could be required to exchange the detailed information, but the forms filed in the court record would only contain summary information.

Section 4.60 – REQUESTS TO EXCLUDE INFORMATION IN COURT RECORDS FROM PUBLIC ACCESS OR OBTAIN ACCESS TO EXCLUDED INFORMATION

(a) A request to restrict access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, or on the court's own initiative. Based upon good cause shown, the court may restrict public access to the information if it finds that:
(1) the risk of harm to the individual;
(2) the individual's privacy rights and interests;
(3) the risk of disclosure of protected proprietary business information;
or
(4) the burden to the ongoing business of the judiciary of providing access;
outweighs the public interest in:
(5) maximum public access to court records;
(6) an effective judiciary;
(7) governmental accountability;
(8) public safety;
(9) use of the courts to resolve disputes;

(10) effective use of court staff; and
(11) quality of customer service.
(b) A request to obtain access to information in a court record that is restricted or limited by this policy may be made by any member of the public. Based upon good cause shown, the court may order public access if it finds that the public interest in:
(1) maximum public access to court records;
(2) an effective judiciary;
(3) governmental accountability;
(4) public safety;
(5) use of the courts to resolve disputes;
(6) effective use of court staff; or
(7) quality of customer service outweighs:
(8) the risk of harm to an individual;
(9) an individual's privacy rights and interests;
(10) the risk of disclosure of protected proprietary business information; or
(11) the burden to the ongoing business of the judiciary of providing access.
(c) The application of the policy involves a balancing of these factors. The factors are not co-equal, but no one factor overrides all of the others in any circumstance.
(d) The request shall be made by a written motion to the court. The requestor will give notice to all parties in the case. The court may require notice to be given by the requestor or another party to any individuals or entities identified in the information that is the subject of the request. When the request is for access to information to which access was previously restricted under section 4.60(a), the court will provide notice to the individual or entity that requested that access be restricted either itself or by directing a party to give the notice .
(e) In restricting or granting access the court will use the least restrictive means to achieve the purposes of this access policy.

It is all well and good to have a procedure to protect records. But in Maricopa County, only 10% of family law cases have attorneys on both sides. Thirty-eight percent have one attorney and 52% have no attorney. Thus more than half of the litigants will be ill prepared to know about or file a request to exclude information from the public.

NOTICE AND EDUCATION REGARDING ACCESS POLICY
Section 8.10 - DISSEMINATION OF INFORMATION TO LITIGANTS ABOUT
ACCESS TO INFORMATION IN COURT RECORDS
The court will inform litigants that information in the court record about them is accessible to the public, including remotely.
Commentary
This section of the policy recognizes that litigants may not be aware that information provided to the court, by them or other parties in the case, may be accessible

to the public. Litigants may also be unaware that some of the information may be available electronically, possibly even remotely. To the extent litigants are unrepresented, this problem is even more significant, as they have no lawyer who can
point this out. To address this possible ignorance this section requires a court to inform
litigants about public access to court records.

Information is good, but still many litigants will not know what to do about it. Some may not even recognize the danger.

Section 8.30 – EDUCATION OF COURT EMPLOYEES ABOUT THE ACCESS

POLICY

The Court and clerk of court will educate and train their employees to comply with this policy so that Court and clerk of court employees respond to requests for access to court information in a manner consistent with this policy.
Commentary
This section mandates that the court and clerk of court educate and train their employees to be able to properly implement the access policy. Properly trained employees will provide better customer service, facilitating access when appropriate, and
preventing access when access is restricted. When properly trained, there is also less risk
of inappropriate disclosure, thereby protecting privacy and lowering risk to individuals
from disclosure of sensitive information. Training should also be provided to employees
of other agencies, or their contractors, who have access to information in court records,
for example as part of shared integrated criminal justice information systems.

On May 17, 2002, meetings were held on this policy in Washington, DC. Testimony from victims of violence was heard throughout the weekend meetings. One suggestion was tiered access i.e. remote access by Internet would be less available than local access. This would protect the victim who relocated to find safety. The committee discussed such options as filing under initials, a pseudonym, or a code. The file could be labeled "case restricted or sealed". The committee approved a proposal to allow a victim to restrict access in a variety of ways e.g. remote, onsite, docket listings, removing all names within the document, etc. and that the restriction should apply from time of application i.e. immediately. The committee agreed to restrict victim contact information categorically (home address, phone, email etc.) and to restrict remote access to family law and protection order cases. Emphasis was made that judges and clerks need to be thoroughly trained.

This issue is acute in Arizona because we have just begun an online order of protection registry that includes served orders of protection only. The registry can be found at http://www.159.87.239.94/default.asp

Credit History

Because of federal law requiring cross listing of joint debts among joint debtors, it is possible that after a divorce, the credit history of an ex-spouse would be sent to the other spouse if they retain joint debts from the divorce, which in most cases, they do. If the victim has relocated for safety, that credit history would have her new address on it. Presently the only solution is to write to the credit company requesting that all debts become hers solely so as not to cross list. But the other spouse could have been ordered to pay joint debt that will remain on her record. Another solution is to use a PO box or alternative address but that too could be problematic if the victim has relocated for safety to another state and doesn't want the abuser to know what state she is in.

Funder's Information

Funders are entitled to financial information regarding their grants, but that does not include information to identify specific residents or private information regarding specific victims of domestic violence. Many shelters have told us that funders are demanding individual files, names and addresses intact, for audits. This is a violation of state and federal law as well as extremely dangerous to victims. For example, a Tempe city auditor asked for 10 files of Tempe residents. The shelter had no idea if that auditor was a relative of an abuser, a next door neighbor of the victim, or a business partner or co-worker of the perpetrator. On or about May 30, 2002 an employee from DES was doing audits at House of Hope in Douglas, AZ and Forgach House in Sierra Vista and refused to accept the redacted files that the shelters provided. DHS had accepted the redacted files, but the DES auditor refused and told House of Hope that she would document them as non-compliant and cut off their funding. She also told the shelters they had to include in the informed consent form that information could be released to DES. This is a violation of federal law. Funders need to be cautious about protecting confidentiality of battered women's communications with a domestic violence program.

The need to track a domestic violence program's use of funds must be balanced against the interests of battered women in maintaining confidentiality, and therefore, safety. The real extent of the potential damage to battered women, and the potential risk of death to at least some of the domestic violence program's clients by sharing confidential information must be clearly understood, and cannot be underestimated, when the respective interests are balanced. The women who come to a domestic violence program for help will be hesitant to do so if there is no expectation of confidentiality. They may delay asking for help until it is too late. They may never seek services again believing the promise of confidentiality is false. Any sense of trust is destroyed.

Any information requested by funders should be evaluated carefully to determine what is absolutely necessary to determine whether funds were spent appropriately. Funders can be provided financial information about the use of funds, and general demographic information that does not identify particular clients, without breaching confidentiality. Funders may also be provided some limited information about client files where all potentially identifying information has been redacted. Advocate notes or

information revealing communications between a battered woman and the advocate or counselor should not be part of the information requested by a funder.

Funders and their auditors must be willing to sign confidentiality and non-disclosure agreements before reviewing any information which is not generally provided to the public or any client related information, even if it has been redacted.

On September 20, 2001, DHS issued a notice entitled: Guidelines for Removing Confidential Information from Inspection Reports. The notice reminds programs that personally-identifiable patient, resident, and family information, complainant information; and medical records and the information contained in medical records is privileged and confidential and not available to the public. The notice tells programs to redact records in inspection reports that would divulge any of the private information. That in itself violates federal law, which DHS has incorporated by reference into their regulations, because under federal law the records are not to be released at all except after an *in camera* hearing. Further the information to be redacted e.g. name, social security number, addresses and telephone numbers should not be released even to the funders.

Recommendations

Protection

A clear consistent uniform confidentiality law is vital for the safety of victims. Yet every attempt to pass such a law has been stymied by those who should favor it, prosecutors.

Arizona needs a mail confidentiality program like the one in Washington to ensure that victims can be safe from abuse and stalking after separation.

The statutory duty to warn needs to be followed in intimate violence cases. However, since the studies show that those in the helping professions rarely recognize domestic violence when they encounter it, it is difficult for them to act in accordance with the law. Licensing agencies can ensure that professionals have the requisite training in domestic violence and understand the need to warn and to design appropriate interventions. They can also require continuing education credits to meet the educational requirement for those already licensed. Educational institutions can ensure that graduates are properly trained in recognizing intimate violence.

Victims of intimate violence need the same protection in regards to their voter registration and other public information as other persons who are targets of criminals e.g. law enforcement officers, prosecutors, and judges. Many more battered women are murdered every year in Arizona than judges, prosecutors, or law enforcement officers. Yet, all three have more protection.

Arizona's driver license confidentiality does not comply with federal law and changes need to be made immediately for the protection of victims.

Funders need to revise their auditing and site visit protocols to comply with federal and state law. Information that identifies a specific resident or program participant should never be revealed. If that is a contract requirement, agencies need to immediately revise those contracts. If it is a training issue, agencies need to immediately issue new protocols for audits and site visits.

Chapter 7 - Other Policy Issues and Problems

Mandatory Medical Reporting

Arizona has a mandatory medical reporting statute (ARS 13-3806) that requires a physician, surgeon, nurse or hospital attendant who treats a person for gunshot or knife wounds, or "other material injury which may have resulted from a fight, brawl, robbery or other illegal or unlawful act, shall immediately notify the chief of police or the city marshal…" A violation is a class three misdemeanor.

Such reporting statutes, when used in domestic violence situations, are very controversial. Proponents claim such laws enable better data collection, improve safety and care, and assist law enforcement in holding batterers accountable. Advocates for battered women fear that such reporting endangers battered women and decreases the chance she will receive medical care because the abuser prevents her or she fears the breach of confidentiality.

The National Research Council and the American Medical Association (AMA) opposes mandatory medical reporting of domestic violence injuries and notes there is little evidence to support the arguments of the proponents. The reporting laws conflict with AMA confidentiality policies. The Council on Ethical and Judicial Affairs tells physicians to routinely screen patients for physical, sexual and psychological abuse, but not to disclose the diagnosis for an adult patient to anyone without the patient's consent. (Current Ethical Opinions, opinion 2.02) Further, AMA Policy Compendium 515.983(6) 1991 states that "(f)or competent adult victims physicians must not disclose an abuse diagnosis to caregivers, spouses or any other third party without the consent of the patient."

Only seven states (CA, CO, CT, KY, NM, RI, TN) have had specific domestic violence mandatory reporting and two states (CT and RI) let the laws expire due to lack of proof of benefit. Kentucky claims their program is very successful because of two factors: victims are allowed to refuse services and the shelters are fully funded. On the other hand, the Kentucky state coalition reports that only a handful of the thousands of cases reported to the Department of Social Services result in opened cases, thus the risk is not worth the benefit. In Arizona, only 37% of victims who sought shelter found it in fiscal 1990-91. Thus to mandate reporting exposes the victim to increased danger.

Reporting to a state social services division can potentially risk the involvement of Child Protective Services, victim blaming, and the fear that children will be removed. These fears discourage victims from seeking help. Such reporting for an adult victim also violates the empowerment model, replacing the control of the abuser with the control of the state.

Mandatory medical reporting can also lead to skewed statistics. A study by Rudman and Davey, (Identifying Domestic violence within inpatient hospital admissions using medical records, Women and Health v. 30, no. 4, 2000) shows that non-white populations are approximately two times more likely to be identified as victims of physical violence than whites and as age increases, the likelihood of being identified as a victim of physical violence decreases.

Public Assistance

Several problems have arisen in the context of public assistance.

Good Cause Exception

In at least three cases in the last year, victims of violence were refused a good cause exception under USC 602(A)(26)(B), DES 2-10.802.01(I) even though they had presented good factual reasons. In one case, the victim's actual address was given to the perpetrator in Kentucky. In another, the perpetrator immediately filed for custody of the child. Since the Attorney General does not represent the victim, she is then left without representation in the custody action. In the third, the victim had to flee three times as the perpetrator, a former Green Beret, kept finding her. The hearing was ultimately cancelled when ACADV intervened with the Attorney Generals office. Anecdotally we have heard of cases of victims being sanctioned for failure to cooperate in child support collection. Under the law, they should not be sanctioned if their failure to cooperate is based on a realistic fear of the perpetrator.

DES workers, often little or poorly trained, have much discretion in determining whether good cause applies or not. They must believe that the applicant is a victim. It is even a problem in shelters as advocates do not tell victims of the good cause exception. We have even had shelter employees tell us that they feel the victim will only "take advantage of it". Again, this signifies severe judgment of a woman seeking safety, health and justice.

Benefit Time Limits

Arizona has adopted the domestic violence exception to the time limits for benefits. Usually a person on TANF can receive benefits for 24 months out of a consecutive 60 months. However, certain months are not counted. These include any months that an adult is:

- Disabled or incapacitated
- A full-time caretaker of a disabled, dependent person
- Age 62 or older
- Participating in a work subsidy program
- A victim of domestic violence

Some DES offices are interpreting "a victim of domestic violence" to mean only the time that the victim actually spends in the domestic violence shelter. As soon as she leaves the shelter, she is being obligated to participate in the JOBS program and loses her childcare subsidy. That was not the intent of the law. The intent was to allow victims to stabilize their lives, which is not accomplished in a shelter. A shelter is only a temporary refuge. When she gets out, she still has to find a place to live, deal with turning on utilities and phone, find a job, find day care etc. The months should not count and the childcare subsidy should not end immediately upon her leaving a shelter.

Assets and Property

Anecdotally some DES caseworkers are refusing services to victims claiming that the assets of the perpetrator are "available" to the victim and therefore she does not qualify for benefits. If the victim can prove she does not have sole ownership or access

to the property e.g. bank accounts, then the assets, no matter how prolific, are not to be counted and the victim should be eligible for public assistance.

Likewise anecdotally some DES workers are disqualifying victims because they have a car claiming that the gross value is over the $2,000 resource limit. A victim in Tucson was told to sell her car and then she would be eligible. But if she sold her car, she wouldn't be able to get or hold a job! In fact, the TANF regulations require that the value of one car is totally exempt and only the equity value of a second car counts, not the gross value.

Unemployment Insurance

In the 2001 legislative session, ACADV attempted to pass a law that would require DES to find that victims of violence who had to flee for safety had left work for a compelling personal reason and therefore, were eligible for unemployment insurance. DES stated that they already cover those cases though shortly thereafter a woman in Globe was denied on that very basis.

ACADV filed a petition for rule making which DES accepted and opened a file on March 8, 2002. Massachusetts, Minnesota, Montana and Oregon already have this protection.

Housing

The numerous problems in the public and private housing market are another area of policy work that ACADV is just getting involved in. First, there is a lack of transitional housing for victims of violence and a lack of low income housing for permanent residence.

In several legislative sessions, bills have been introduced to allow victims of violence to be released from a lease when they need to relocate for safety. The bills have not passed. Anecdotally, landlords are releasing perpetrators from lease obligations, but not the victims. Since most of the large apartment complex owners have more than one complex, the victim could simply be moved to a different complex even in a different state if she desired. However when approached, landlords have been reluctant to do even that.

On the other hand, we have several reports of landlords evicting victims pursuant to ARS 33-1368(A) and 33-1377 when the violent act was done not by the victim, but by the perpetrator. Often the perpetrator is not even charged with the underlying violent act. To then evict the victim is the ultimate in victim-blaming. Perpetrators know that by their behavior, they can force her to become homeless or return to them.

We have also heard that landlords are requiring victims to obtain an order of protection or they will evict them. This is problematic because only the victim can know if an order will help her be more or less safe. Also if she says she is getting it because of the landlord, she will be accused of abusing the process. A housing specialist told us that justices of the peace are reading ARS 33-1368 to mean that the tenant must get an order of protection, which is clearly not a fair reading of the statute.

Once again, victims are put into a Catch 22 situation. If the landlord finds out about violence, the landlord lets the perpetrator move (presumably to prevent further incidents) but won't let the victim out of the lease. The victim is forced to get an order of

protection but if it's violated, the victim is evicted. If she is evicted, she can become homeless or return to the abuser. Neither choice is acceptable.

Public Housing

The zero tolerance, one strike policy against violence in public housing is also used against victims. The HUD v. Rucker, (Nos. 00-1770/00-1781, Supreme Court of the U.S., December 20, 2001) case recently decided by the Supreme Court dealt a death blow to victim's rights to public housing. The case held that the tenant was responsible for the violence or illegal activities even if s/he did not do it, did not know about it, and it wasn't even done on the landlords property, and could be evicted. One eviction from public housing means that the person can never again, for the rest of their life anywhere in the U.S., get into public housing. This is a severe blow to victims.

A second blow was the change in policy for priorities in public housing. Battered women with children used to have a federally protected priority to get into public housing. That has now been delegated to the local authority so that advocates must ensure at every locality that the priority remains. Most advocates didn't even know about the change and policies could have been reversed without any awareness among the service provider community.

Interspousal torts

At the present time, the statute of limitations for interspousal torts is one year from the time of the divorce. This time limit should be extended. Most battered women are not ready in a year to make an important decision about whether to bring a civil action against the abuser.

Legal Representation

A study by Bob James at Maricopa County Superior Court in 1990 found that 52% of parties in a divorce had no attorney, 38% had one attorney, and only 10% had two attorneys. While no new study has been done, Mr. James estimates that the figures have not changed significantly and are fairly common for all of Arizona.

Yet studies done by the federal government to ascertain the efficiency of their grant making showed that the most effective service that can be given to victims of violence to allow her to escape is good legal assistance. Good public policy would be to put money into the most effective service. Yet legal assistance is seriously underfunded.

Fingerprinting

Pursuant to complaints from the service providers, changes are needed in the fingerprint system in Arizona. These problems boil down to two major changes in the fingerprinting statute.

Additional crimes have been added for the criminal history check. In the past, domestic violence shelter employees and volunteers were not screened for such a long list of crimes. Although ACADV supports a thorough background check to ensure the safety of the program participants and personnel, this increased number of crimes has caused problems for many programs. The list of exclusions for a class one fingerprint clearance card are different in ARS 36-3008, which applies specifically to a domestic violence shelter, and ARS 41-1758.03(B) and (C). Not only does this create conflict and

confusion, but shoplifting in (C) is an offense most teenagers have committed and writing a bad check (C) is an offense most people with checking accounts have done at one time or another. These restrictions seem unduly harsh especially when applied to a person who may have committed them years ago. For example, a woman who worked in a shelter for over five years had been charged with shoplifting over twenty years ago was denied clearance when she renewed her fingerprint card.

The second recent change in the law is that employees can no longer work under supervision while awaiting a good cause hearing on the clearance denial. With the removal of this capability, there have been numerous situations that have required employers to ask someone to wait weeks – without working and usually without pay – for the good cause hearing, assuming they want to challenge the rejection of clearance. Many times, because of the low pay, it is hard to obtain qualified staff for services and this process has made it even harder by losing employees who are not willing or financially able to wait for the good cause hearing. In turn, this leads to increased turnover and the programs suffer from lack of full staffing.

Some domestic violence shelters have their administrative offices separate from the shelter facilities. Yet there is no provision for exemption of those who work only in the administrative offices and have no contact with clients or children. Such an exemption is present in other statutes. In ARS 36-425.03(D) (E) (F) and (G) that apply to children's behavioral health programs, an exception is granted to the fingerprint requirement if the employee or volunteers are not in any capacity requiring or allowing the new employee to provide direct services to juveniles or they have direct visual supervision. What is the justification for requiring fingerprinting of every employee and volunteer in a domestic violence shelter whether they provide services to children or not, when fingerprinting is not required in a children's behavioral health facility? What is the justification for requiring fingerprinting of every employee and volunteer in a domestic violence shelter whether they are visually supervised or not, but allowing employees and volunteers who work directly in children's behavioral health facilities to do so?

In ARS 36-411(G), volunteers who provide services to residents of institutions and home health agencies who are under direct visual supervision of a previously screened employee are exempt from the fingerprinting and criminal history records check. What is the rationale for completely exempting volunteers who work in residential care institutions or home health care where the clients are potentially more vulnerable than those in a domestic violence shelter? Why are the regulations in domestic violence shelters more stringent than those in child behavioral health, institutions or home health?

ACADV suggests:

- Put a criteria or benchmark for misdemeanor crimes. For non-violent and non-child abuse crimes, have a limit of five years for previous convictions. Many times victims of violence are wrongfully charged in single or dual arrests. Thus they are then prohibited from working in a shelter program, nursing or child care. Former victims are often the best employees.
- Reinstate the ability for staff to work with supervision while awaiting a good cause hearing.
- Create an exemption for domestic violence shelter employees or volunteers who work in an administrative office that is separate from a shelter.

- Make ARS 36-3008 consistent with 36-425.03 and 36-411(G), which requires a fingerprint clearance only from employees or volunteers who are providing direct services to a child without direct visual supervision.

Another problem in fingerprinting is the move toward finger imaging for public assistance as well as other financial transactions. This is extremely disadvantageous for battered women who need confidentiality and privacy in order to be safe.

Employers Against Domestic Violence (EADV)

EADV was established in October 2000 as a group of employers both private and public concerned with the effects of abuse in the workplace. As of the fall 2001, there were 40 members. Their goal is to raise awareness, develop a workplace prevention model, and provide educational resources, materials and assistance to employers, build a collaborative method to respond to community needs, develop a unified fund-raising event.

The Attorney General created an Office Policy on Domestic Violence and Violence in the Workplace. The policy allows an employee to leave work to deal with issues related to domestic violence.

In 2001, the legislature passed a law allowing victims of violence, in companies with more than 50 employees and who are not key employees, to leave the workplace without negative consequences when responding to victims rights notifications in criminal cases. A bill in 2002 to extend that to obtaining or attending hearings on an order of protection was not passed due to parliamentary measures. The business community did not oppose it.

Men's Anti-Violence Network (MAN)

This group was formed in 2001 to work on issues of batterer accountability. Thus far they have engaged in a public relations campaign including bill boards, ads and movie theatre slides and sought unsuccessfully to have three pieces of legislation passed in the 2002 legislative session. Their focus, unfortunately, is now turning away from batterer accountability and to prevention work with children. We do need a group, especially a men's group, to focus on batterer accountability. That is a very neglected part of the problem in Arizona.

Licensing

A perennial issue in Arizona has been the licensing of shelter facilities. Currently they are licensed under DHS as behavioral health facilities. This is problematic because violence against women is not a mental health issue. In fact, it's the other way around – mental health problems of women are likely caused by violence against them. A recent study, (Newmann, Ziege, Sallman, Forging New Partnerships with Women: Improving Services and Increasing Community Resources for Women with Histories of Trauma and Co-Occurring Substance Use and Mental Health Problems, School of Social Work, University of Wisconsin-Madison, 2001) found that over 90% of the women interviewed reported physical or sexual abuse or both in their lives and some continued to be in violent situations. They found that 47% of the women who allegedly had mental health and substance abuse problems had a history of abuse. This included 61.9% of women who had had services from both a mental health and substance abuse service, 56.6% of

women who had had services from a substance abuse service only, and only 11.1% of women who had had services from a mental health provider. Thus the provision of mental health services alone is not the primary need for abused women.

Significantly, 40% of the women who received mental health, substance abuse and drug abuse services, did not feel that their symptoms had decreased as a result of the services, 37% are not doing better in social situations, 36% are not doing better in their jobs or school, and 28% do not feel any more hopeful about the future. Among women who had experienced physical or sexual abuse, which was 100% of their sample and 83.3% of other women, 75% of the target group of women and 59.6% of the other women felt it was important to get help with the violence now, not mental health services. But 30% did not seek help because they disliked being labeled "mentally ill".

When asked what would help them, 61% of the women reported that improved economic circumstances was the answer. When asked if they could get any kind of support or help they needed, what would that help be, only 30.2% of the target group and 22.2% of the other women identified formal or professional services as an important source of help. The help they sought was:

- Material resources (27.5%)
- Formal services (26%)
- Informal supports and services (17.5%)
- Personal change (16.7%)
- Divine intervention (11.8%)

The solution is to end the violence; not treat the woman. By giving the women material resources so they can escape and survive, they will be empowered to escape the violence.

However, because of the DHS licensing, some shelters are doing "provisional diagnosis" and other psychological labeling which is only harmful for the victims. Because of separate licensing for adult and children's facilities, some shelters are forced to separate mothers and children in separate wings. At a time of trauma, for a child to be separated from the nurturing, protective parent only increases the trauma to the child. Because of licensing and alleged funding requirements, shelter staff are spending far more time doing administrative tasks e.g. counting pills and filling out 17 page forms, than serving the victim. Some shelters lock medicines and dispense them only at certain times. This is in violation of medical and pharmacy licensing rules since shelters are not medical institutions. Some shelters require attendance at three groups a week regardless of what ever else the woman may have to do e.g. working, going to school, and child care. Some shelters require a woman to care for her own child 24/7 yet require them to cook dinner in a kitchen where children are prohibited. Some shelters have devised a regime closer to a prison than a refuge for victims of violence. Rules include 6:00 a.m. wake up, 7:00 p.m. lockdown, room searches, and rigid eating times. Why is the victim rather than the perpetrator put into a prison? Why is her freedom and autonomy stripped and replaced with State control? How does that differ from the abusers control? Some women have actually left shelter saying, "I can get this at home."

Arizona is one of few states that requires any state licensing, and the only state that requires licensing of shelters though a behavioral health agency. (National Resource Center on Domestic Violence, PA) Georgia certifies some programs through the Department of Human Resources, Family Violence Program Advisory Committee on Domestic Violence, but it is not required. Kansas has program accreditation and New

Hampshire program standards but it is not known through which body. Michigan programs are only required to meet service standards from the funder. In Missouri, the Coalition monitors programs for adherence to statewide service standards. In North Carolina, Pennsylvania, South Carolina and Tennessee, the Coalitions are working on plans for certification. Discussions need to be held at high levels regarding the licensing issue.

Israel has experimented with shelters for the abusers. Rather than disrupting the routine of the victim and children by removing her from the home, the abuser, the one who broke the law and caused the problem, is removed to a shelter for up to a month. The perpetrator is required to attend groups and parenting classes as well as work and take care of the shelter. Preliminary results show this method to work because the focus is on the correct person – the abuser. It's his behavior that needs to change. Thus, the focus is rightfully on creating that result.

Evaluation

Outcome based evaluation also poses problems for domestic violence service providers. What is the outcome to be measured? Crime statistics of all kinds are dependent on a variety of sources including cyclical trends, age variances, the economy, reporting variances, the media, and many other factors.

To rely on specific outcomes e.g. reports to police, convictions, divorces, relocation is to deny the tremendous number of independent variables impacting on this problem. As should be evident from this policy paper, the victim is often snared in a Catch 22 from which she has no escape. She is also often re-victimized by the system whether it be housing, public assistance, law enforcement, CPS, judicial, medical or employment.

All we can measure with any validity and reliability is the provision of services. We cannot measure the outcomes. Empowerment based service delivery means allowing the victim to walk her own path, as we all must do. Eight of 10 battered women do get out of the relationship. The how and when must be her individual decision. She knows the abuser best. She knows what safety measures must be in place. We cannot force that decision or we risk her and her children's lives in a very dangerous scenario.

To require certain predetermined outcomes only replaces the coercion of the abuser with the coercion of the State. Since the goal of service provision is empowerment of the woman, her choices, whether we like them or not, are the important result. But how can she exercise that choice if the State has coercive controls in affect? How does one measure women's empowerment in a patriarchy?

To require certain predetermined outcomes not only re-victimizes the victim, but plants the seeds for the opponents to shortly return with statistics proving that services do not "work" and therefore all funding should be discontinued. This horrific possibility would seriously endanger victims and their children and put Arizona back into the dark ages.

Legal Services

Two specific problems have surfaced regarding legal services. Perpetrators have learned that they can call a legal aid office and ask for an intake. Some do in fact use the services, but others never intended to but intended to prevent their spouses from doing so.

Legal aid offices are then telling the abused spouse when she calls that because he called first, they are conflicted out and the office cannot help the battered woman. This is just another manipulation by the perpetrator.

Such a harsh result is not necessary. At Community Legal Services, Domestic Violence Project in the late l980's, the same problem existed. Unless the perpetrator identified himself as a victim, he would be put into a class for "do it yourself". Thus, by obtaining only basic information on that initial intake form, confidentiality was not breached when the victim later called in. He would simply be withdrawn from the class.

Given the importance of legal services to victims and the paucity of such services, it is real disservice to victims to let the perpetrator manipulate the system in that way.

A phenomena growing around the country and no stranger to Arizona has been labeled "legal abuse syndrome". That is where the perpetrator uses the legal system as a tool of abuse, manipulation and stalking. This is evidenced by repeated filings of baseless motions, refusal to settle on reasonable terms, fraudulent statements to the court etc. If the parties have money, the purpose may be to bankrupt the spouse. If the parties do not have money, the purpose may be to exhaust the spouse. In a Chicago case documented in the book "All but my Soul" by Dr. Jeanne King, when the legal bills approached a million dollars, she finally had to save her own life and leave three boys in the custody of a man who had seriously abused them all. Investigative reporter, Karen Winner, wrote a book entitled "Divorced from Justice: Abuse of women and children by Divorce Lawyers and Judges", Regan Books, NY 1996, about the same phenomena in a northern CA county. Such cases have and are occurring in Arizona.

Availability of firearms

Firearms are implicated in almost two-thirds of intimate murders in Arizona. According to CAPGUNVIOLENCE, a local organization fighting for more responsible guns laws, Arizona, because of its weak guns laws, is a major transit point for legal and illegal guns. The political will does not exist to address this problem. Instead, blood continues to flow.

Recommendations

Protection

A statewide discussion needs to occur regarding the mandatory reporting by medical personnel of certain injuries. Those at the table must include victim-survivors, advocates for victim-survivors, the medical community, law enforcement and state agencies. The current structure may cause more injuries to women rather than less.

Rebuilding the lives of victim-survivors

To allow victim-survivors to rebuild their lives, several changes are necessary in the benefits system. The good cause exception must be more fairly applied and confidentiality must be assured. Benefit timelines need to be broadened to include time out of the shelter. Assets and property unavailable to the victim should not be used to deny her resources. Victims who flee to safety must be granted unemployment insurance. Victims who need to leave work to get or defend an order of protection must not be penalized. Victims must not be fired from jobs because of the violence.

Lack of available and affordable housing is one major barrier to a victim in rebuilding her life. Local areas must reinstate the priority for domestic violence victims in public housing. Private landlords should not evict victims for the acts of the perpetrator but should allow the victim to move to a safe location for her own protection.

The fingerprinting statutes must be uniform and not place a harsher burden on domestic violence shelters. Victims who have old convictions or were unfairly arrested should not be prohibited from certain forms of work.

Outcome based measures do not help build the lives of victim-survivors but rather impose the state's idea about what a victim should do. This is not consistent with the empowerment based model of victim services.

The current licensing system for domestic violence shelters does not enhance the victim's ability to rebuild her life. With the focus on the mental health of the victim, she is pathologized and the perpetrator disappears from the equation. The focus needs to shift to the economic security of the victim. That is the most useful means of allowing her to rebuild her life. The result of the licensing, as described in this section, creates a disincentive for victims to go to shelter or to stay there.

Accountability

Because the MAN group is one of the few groups that focus on abuser accountability, it should continue to do so. Men need to step up to the plate. The idea, pioneered in Israel, of supervised housing for perpetrators should be piloted to place the focus for change where it needs to be, on the perpetrator.

CONCLUSION

The five principles that form the basis of the Model Code are prevention, protection, early intervention, rebuilding the lives of victim-survivors, and accountability for the perpetrator. Arizona fails on every one. In some cases, the laws need changing. In other cases, the laws are adequate, even good, but the implementation and enforcement is non-existent. For many years now, the focus has been on the victim. That is appropriate because that person is a victim of crime and needs protection as well as assistance in rebuilding her life. It is also appropriate to reduce lethality and prevent harm to the children.

But, unfortunately, the focus has shifted to "treating" the victim and fixing her as if she were the problem. There is no doubt that the trauma of violence can result in what are labeled "mental health problems". Behaviors which may resemble paranoia, hyper-vigilance, depression, hysteria, even schizophrenia can be logical coping skills for a victim in a recurring violent situation. We understand these behaviors in relation to soldiers in a war, and survivors of the concentration camps, plane crashes, natural disasters, or school shootings. After September 11, 2001, much discussion ensued about the impact of the trauma for adults and children. If we understand the behavioral implications of that trauma, why then do we fail to recognize the behavioral implications of the trauma suffered by battered women? We do not label those other victims as mentally ill nor chastise them for not escaping the trauma. Why do we do so to battered women?

The victim is not the one who needs "fixing". The perpetrator is the one who needs to change – his belief that he has the right to use violence against another person is what must stop. The focus needs to shift back to providing the victim with safety, health and justice, not therapy, labels, and control. Most of all, she needs economic resources. She needs safe, low income housing, employment with a living wage, medical coverage for herself and the children, education or training to step into the American dream. Without it, her life is a nightmare.

The focus needs to shift to holding the perpetrator accountable and changing the culture of violence in our homes, streets, and country. This does not call for a shift of resources away from the victim. Victims' needs, especially in Arizona, are severely underfunded already. The efficacy of BIP's has not been proven to justify expenditures. Accountability for perpetrators can cost very little. The program of the Sierra Vista judge who calls the perpetrator in for a weekly review costs nothing. The judge who protects the children and victim by ordering only supervised visitation paid for by the perpetrator spends no state funds.

The most glaring gap in domestic violence services in Arizona is the lack of collective political will. Arizona as a whole, including the majority of political leaders, has not stepped forward with strong and meaningful actions to hold perpetrators accountable. According to former Surgeon General C. Everett Koop, violence against women is an epidemic in America. Yet little political will has been shown to stem this tide of violence. Until that happens, we are only putting bandaids on deep, gaping wounds but doing little to stop the hemmorage. These wounds cut into the fabric of family, community and justice in our country.

The National Network to End Domestic Violence recently distributed the results of a survey showing that in the U.S., more women feared intimate violence than foreign terrorism. In Brazil, they have established separate police stations for women to report sexual assault and domestic violence because the "normal" police stations were not safe places for women. In Japan, the incidence of sexual harassment and assault on transit cars was so severe they established separate cars for women. Mr. Bush has suggested that separate schools for girls and boys would be a good idea. While on the surface, these sound like reasonable ideas, what is the underlying message? When men commit violence against women, the men are not held accountable. The women are segregated in "separate but equal" facilities for their own protection. In the U.S., we already know that "separate but equal" isn't either. Instead, it's simply discrimination against the segregated group. We have to stop the artificial distinction between women and men and teach both respect for the skills and abilities of the other, teach both equality and responsibility, and teach both that the right to be free from violence starts in the home. If you can't make peace in the home, you can't make peace in the world.